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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 376. 114

CATHARINE HALL, MARIA H. HALL, AND SALLIE G. BROWNLEE, APPELLANTS,

vs.

WILLIAM H. LAW.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

**FILED DECEMBER 28, 1877.**

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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1 Pleas of the circuit court of the United States for the district of Indiana, (at Evansville) begun and holden at the United States court-rooms in the city of Evansville, in said district, on the first Monday of April, in the year of our Lord one thousand eight hundred and seventy-six, before the honorable Walter Q. Gresham, judge of the district court of the United States for the district of Indiana, and ex officio one of the judges of said circuit court.

CATHARINE HALL, MARIA H. HALL, SALLIE G. Brownlee,
*vs.*
WILLIAM H. LAW. } Chancery.

Be it remembered that heretofore, to wit, on the 20th day of October, A. D. 1874, there was filed in the office of the clerk of said court a transcript from the Vanderburgh circuit court of the State of Indiana, in the district aforesaid, in the words and figures following, to wit:

Be it remembered that a term of the Vanderburgh circuit court was begun and held at the court-house in the city of Evansville, county of Vanderburgh, State of Indiana, on the fourth Monday in April, 1874, before honorable William F. Parrett, judge of the first judicial circuit of the State of Indiana, at which time, so begun and held as aforesaid, among other proceedings, the following were had, to wit:

And be it further remembered that heretofore, to wit, on the 24th day of January, 1874, there was filed in the office of the clerk of said court the complaint in an action entitled as follows, to wit:

CATHARINE HALL, SALLIE G. HALL, MARIA H. HALL,
*vs.*
WILLIAM H. LAW.

And afterwards, to wit, on the 18th day of February, 1874, the said defendant, William H. Law, filed in said circuit court his waiver and appearance in the following words and figures, viz:

I hereby waive all process and publication notice in the above entitled suit, and enter my appearance by attorney.
New Haven, February 13, 1874.

WILLIAM H. LAW.

And afterwards, to wit, on the 28th day of April, 1874, in said Vanberburgh circuit court, before said Hon. William F. Parrett, said defendant filed his petition in words and figures as follows, to wit:

In the Vanderburgh circuit court.

CATHARINE HALL, SALLIE G. HALL, MARIA H. Hall,
*vs.*
WILLIAM H. LAW.

To the honorable William F. Parrett, judge of said court:

The petition of William H. Law, of New Haven, Connecticut, respectfully shows that your petitioner is the defendant in this suit and that

the same was brought on or about January 24th, 1874, by said plaintiffs, who were, at the time of bringing this suit, citizens of the State of Indiana, and that your petitioner was and is a citizen of the State of Connecticut.

Said plaintiffs claim in the complaint in this suit real estate owned by defendant of the value of more than one thousand dollars, and the matter in dispute herein exceeds the sum of five hundred dollars exclusive of costs.

Your petitioner further represents that this suit has not yet been tried, but that the same is pending for trial, and he desires to remove the same before the trial thereof into the next circuit court of the United States for the district of Indiana, in pursuance of act of Congress approved July 27, 1876, entitled, An act for the removal of causes in certain causes from State courts. He says he is ready to give good and sufficient security as this court may direct for his doing all acts and things required to be done by said pursuance of law upon such removal, and he offers herewith his bond with Azro Dyer, of Evansville, as surety in the penal sum of five hundred dollars, conditioned that your petitioner shall enter in the next circuit court of the United States to be held at Evansville, in said district of Indiana, on the first day of its session, copies of all process, pleadings, depositions, testimony and other proceedings in this cause, and do all other acts required by law.

He prays said bond to be accepted as good and sufficient surety according to said law, and that said suit may be removed into the next circuit court, pursuant to the act of Congress in such case made and provided; and that no further proceedings may be had in this court.

And your petitioner will ever pray.

WILLIAM H. LAW.

2 STATE OF INDIANA,
*County of Vanderburgh:*

Subscribed and sworn this 25th day of April, 1874.

W. M. BLAKEY,
*Notary Public.*

And afterwards, to wit, on the 13th day of June, 1874, in said Vanderburgh circuit court, before the judge aforesaid, the following proceeding and order was had, to wit:

Now comes the parties by their attorneys and the said defendant moves the removal of said cause into the circuit court of the United States for the district of Indiana; and the defendant now here files with his petition for said removal his bond with Azro Dyer as surety, conditioned as provided by law. And the court having inspected said petition and said bond, now here approves said bond and grants the said application.

It is therefore considered that said cause be removed to the circuit court of the United States for the district of Indiana at the next term to be begun and held in said district at the city of Evansville.

STATE OF INDIANA,
*Vanderburgh County, ss:*

I, Soren Sorenson, clerk of the Vanderburgh circuit court, certify that the foregoing is a true copy, full, correct, and complete, of process, waiver, petition, and order removal of said court in the above-entitled cause.

Witness my hand and the seal of said court, at Evansville, this 17th day of October, 1874.

S. SORENSON, *Clerk.*

And afterwards, to wit, on Tuesday, the 20th day of October, A. D. 1874, said day being the second day of the special October term, A. D. 1874, of said circuit court of the United States, the following further proceedings in said cause were had, to wit:

Now, here, on motion of Mr. Asa Igleheart, a rule is entered requiring the complainants to file their pleadings herein by Thursday, the 22d day of October.

And afterwards, to wit, on Thursday, the 22d day of October, A. D 1874, said day being the fourth day of the special October term, A. D. 1874, of said court, the following further proceedings in said cause were heard, to wit:

Come now the complainants by their counsel, Messrs. Denny and Marsh, and file their bill of complaint herein in the words and figures following, to wit:

In the circuit court of the United States for the district of Indiana, at Evansville. In equity.

CATHARINE HALL, MARIA H. HALL, SALLIE G. Brownlee
*vs.*
WILLIAM H. LAW.

To the judges of the circuit court of the United States for the district of Indiana, at Evansville:

Catharine Hall, Maria H. Hall, and Sallie G. Brownlee, late Sallie G. Hall, of Princeton, in the State of Indiana, and citizens of said State, bring this bill against William H. Law, of New Haven, in the State of Connecticut, and a citizen of the State of Connecticut, who has removed this action from the Vanderburgh circuit court of the State of Indiana to this court, and thereupon your orators complain and say:

That they are the owners in fee simple and tenants in common of the undivided two-sevenths part of certain lands lying in the county of Vanderburgh, and State of Indiana, described as follows, to wit: Lots number three (3) and four (4) in block number one hundred and thirty-seven (137) and block number one hundred and forty-two (142); the south half of block number one hundred and fourteen (114) and the south half of block one hundred and fifty-seven (157), in that part of the city of Evansville known as Lamasco, all of the value of thirty-five thousand dollars, being laid out and platted on fractional section twenty-five, in town. six south, of range eleven west, in the district of lands offered for sale at Vincennes; that they are seized of the same by a good and indefeasable title by descent from one William P. Hall, deceased; that the complainants Sallie G. and Maria H. are the daughters and heirs-at-law of said William P. Hall, who departed this life intestate in the year 1857; that the complainant Catharine Hall is the surviving widow of said William P. Hall, deceased, who died seized in fee simple by a good and sufficient title of said land; that the defendant pretends and claims to be the owner of the fee of said lands under and by virtue of certain proceedings in a cause in chancery had by the Vanderburgh circuit court, and offers to sell said lands to divers persons, and pretends that he can pass a good, perfect, legal title thereto, and that he holds the title thereto of these complainants, greatly to their injury, insomuch that they cannot by reason of such pretense and claim sell their interest in said land for its true value; that they now file herewith and

bring into court and show to your honors a full, true, and complete copy of all and singular the said proceedings of said Vanderburgh circuit court in said cause in chancery whereby and under which the defendant claims said title, and mark the said copy Exhibit A, and pray that the same may be taken as a part of this bill.

And your orators further say that at the time of commencement of said proceedings the said William P. Hall was an infant under the age
3 of ten years, and, as your orators are informed and believe, was never served with any process or writ of subpœna in said cause in chancery in the said Vanderburgh circuit court, and at the date of rendition of the decree set out in said copy of said proceedings of said cause was of too young and tender an age to be capable of consenting to said decree or to an appearance by guardian ad litem in said cause; that the William H. Law named as one of the complainants in said cause, after the rendition of said decree, became the grantee of his co-plaintiffs of their like pretended interest under said decree in said cause in chancery in said Vanderburgh circuit court, and was the same William H. Law who is the defendant in this suit.

Wherefore your orators pray that their title to said land may be quieted and that the defendant may be forever barred, inhibited and enjoined from setting up or claiming any right, title, or interest in or to said land, or to any part thereof, and from conveying or attempting to convey the same; and to the end therefore that the defendant may, if he can, show why your orators should not have the relief hereby prayed, and may upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories numbered and set forth as by the note hereunder written they are respectfully required to answer, that is to say:

First. Whether the said infant William P. Hall, was personally present in court at any time during the pendency of said cause in chancery in the Vanderburgh circuit court, in which said then infant William P. Hall was defendant, as set out in said copy of said proceedings.

Second. Whether the defendant in that cause ever personally saw the said William P. Hall, deceased, before he was twenty-one years of age; and if so, when and where?

And your orators will ever pray, etc.

CATHARINE HALL.
SALLIE G. HALL.
MARIA H. HALL.

CHARLES E. MARSH & J. C. DENNY,
*Solicitors and Counsel for Complainants.*

UNITED STATES OF AMERICA,
*District of Indiana, County of Gibson, ss:*

On this 21st day of October, 1874, before William L. Dorsey, a notary public within and for the county of Gibson, and State of Indiana, personally, Catharine Hall, Sallie G. Brownlee, and Maria H. Hall, the above-named complainants, who, being by me duly sworn on their respective oaths, depose and say that they have read the foregoing bill of complaint subscribed by them and know the contents thereof, and that the same is true of their own knowledge except as to the matters therein stated on information and belief, and as to these they believe it to be true.

Witness my hand and notarial seal this the day and year aforesaid.

[SEAL.] WILLIAM L. DORSEY,
*Notary Public.*

*Exhibit A, referred to in complainants' bill and filed as a part thereof. Book C, p. 188, September term, A. D. 1833.*

Vanderburgh circuit court, September term, A. D. 1838.

STATE OF INDIANA,
*Vanderburgh County, ss:*

Pleas begun and held at the court-house in Evansville in the county of Vanderburgh, and State of Indiana, on the fourth Monday of September, in the year of our Lord one thousand eight hundred and thirty-eight, before the honorable Elisha Embree, presiding judge of the fourth judicial circuit of said State, and William Olmstead and John M. Dunham, associate judges of the Vanderburgh circuit court.

Be it remembered that heretofore, to wit, at the September term of the court aforesaid, in the year of our Lord one thousand eight hundred and thirty-six (it being the twenty-seventh day of said month), the complainants by their counsel filed their bill of complaint, which reads as follows, to wit:

Vanderburgh circuit court, September term, 1836.

STATE OF INDIANA,
*Vanderburgh County, set:*

Humbly complaining herewith unto your honors, your orators, John Law, of the county of Knox and State of Indiana, and Lucius H. Scott, of the county of Vigo and State of Indiana, and James B. McCall, of the same county and State aforesaid, and William H. Law, of the county of Norwich and State of Connecticut, that on the 18th day of January, 1814, one Peter Jones and Sally, his wife, since deceased, made and executed their deed unto one Nathaniel Ewing for the consideration of to him in hand paid by the said Nathaniel Ewing for two undivided sevenths of fractional section twenty-five, in town. six south, of range eleven west, in the district of land offered for sale at Vin-
4 cennes; that after the making and executing of said deed by said Jones, to wit, on the twelfth of February, 1822, the said Nathaniel Ewing, for and in consideration of the nominal sum of three hundred dollars as expenses in said deed, made and executed his deed in fee simple to one William Prince; that some time in the year said Prince departed this life; that his estate was represented insolvent, and that by an order of the probate court of Gibson County, obtained at the term of said court, 18 , the said two-sevenths of said fractional section twenty-five, in town. six south, of range eleven west, conveyed as aforesaid by said N. Ewing, was ordered to be sold for the payment of the debts of said Prince, and same was sold at public sale to one William David, who became the purchaser for $45.00.

That after said sale as aforesaid, the deed therefor was made to one William P. Hall, a minor, under the age of twenty-one years, for and in consideration of the sum of said $45.00.

And your orators pray that said William P. Hall may be made defendant to this bill and a guardian ad litem appointed to represent his interest herein. And your orators further shew unto your honors that said conveyance was made from said Ewing to said Prince in his lifetime upon a consideration that has entirely failed. That no part of said sum of three hundred dollars was ever paid by said Prince to said Ewing or by any other person for him or on his account, but the same was merely

nominal, and that the only and sole consideration of said conveyance from said Ewing to said Prince was that said Prince should procure from the other parties interested in said fractional section twenty-five, in town six south, of range eleven west, their interest, and lay out a town on said fractional and deed a certain portion of the town lots so laid out to said Ewing after the same were laid out at the expense of said Prince, and deed a share thereof to said Ewing and the complainant, and that said Prince never did procure the other shares in said fractional section twenty-five, being five-sevenths of the same, from the other proprietors, nor did said Prince ever lay out a town on the same, or reconvey any interest in the same to said Ewing, but wholly failed and neglected so to do, whereby the consideration of said deed has wholly and absolutely failed.

And your orators aver that some time after the conveyance of said tracts of said land aforesaid to said Prince, to wit, on the day of June, 1836, your orators, for a good and valuable consideration expressed in said deed, received from said Nathaniel Ewing and Nancy, his wife, a release, or quit-claim deed, for their interest in said fractional section twenty-five, being two-sevenths undivided in said tract of land, whereby they became the legal owners of the same and entitled to all the legal rights and privileges of said Ewing in said tract of land aforesaid, as by said deed, reference thereto being had, will more fully appear, and being the same two-sevenths of said tract conveyed as aforesaid by said Ewing to said Prince; in consideration whereof and for as much as your orators are remediless in the premises and can have no adequate relief only in a court of equity where matters of this kind are properly relievable, and to the end therefore that the said William P. Hall, by his guardian, may answer the bill according to the best of his knowledge, information and belief, and particularly as if the same were again repeated, and said defendant was distinctly thereto interrogated; and that the sale of said two-sevenths of said fractional section twenty-five as the property of said Prince under the order and decree of the probate court of Gibson County be set aside, and that the said deed from the said Prince to Hall be declared null and void, and that the said defendant, by his guardian and next friend, be compelled by an order and decree of this court to make unto your orators a deed conveying all the right, title and interest of said Hall to your orators as the assignees of said Ewing's interest under the deed aforesaid; and that your honors would grant unto your orators such other further relief in the premises as to your honors may seem right; and that your orators may have the benefit of the States' writ of subpœna, etc.

CLARK,
*For Compl't.*

On which appears the following endorsement, to wit:

I, Samuel Hall, guardian ad litem for William P. Hall, do hereby acknowledge service of subpœna in the within bill.
June 10, 1836.

S. HALL.

And it appearing to the satisfaction of the court that the said defendant is a minor under the age of twenty-one years, on motion of complainants Samuel Hall, esq., is appointed guardian ad litem for the said infant defendant, and the said Samuel Hall now here files his answer to the complainants' bill of complaint in these words, to wit:

In Vanderburgh circuit court, September term, 1836.

LAW AND OTHERS
*vs.*
WM. P. HALL, INFANT.

And the said William P. Hall, by Samuel Hall, his father and next friend, saying, etc., for answer to said bill insomuch as he is advised to answer as material and necessary answers, and says that he admits the deed to said Ewing and the release from said Ewing and wife to the defendant; he admits the deed to said Prince and the sale of the premises under the order and decree of the probate court and conveyance as set forth in said bill; and defendant further answering says he has understood and believes that no consideration other than that mentioned in complainants' bill ever was paid by said Prince to Ewing, and defendant has understood and believes that the consideration of said deed was the reconveyance to Ewing of the lots to be laid out on said fractional section purchased by said Prince as in said bill mentioned, and believes the same were to have been made by said Prince in his lifetime, or by any one else for him as in said bill alleged.

Defendant denies all frauds, and prays the court to make such order and decree in the premises as to them may seem right and proper.

SAMUEL HALL,
*Guardian ad litem for William P. Hall.*

And now at this time (that is to say) at the September term last aforesaid of said court, in the year one thousand eight hundred and thirty-six, comes the complainants, by Law their solicitor, and the defendant, by his guardian, Samuel Hall, appointed guardian ad litem in this cause, having filed his answer heretofore in the above suit, and the bill and answer having been considered by the court, it was ordered, adjudged, and decreed that said Samuel Hall be, and he is hereby, appointed by the court a commissioner to make unto the complainants a deed in fee simple of all the right, title, and interest of said William P. Hall of, in, and to two-sevenths of fractional section twenty-five, in town six south, of range eleven west, in the district of lands offered for sale at Vincennes, and being the same tract or parcel of land conveyed by Nathaniel Ewing to William Prince, and which said tract or parcel of land was, under an order of the Gibson probate court, after the death of said Prince, ordered to be sold as the property of said Prince, and was purchased by one William McDaniel, and by him conveyed to the defendant, said Hall, as in said bill alleged, and being the same tract or parcel of land assigned to said William P. Hall in the partition of said fractional section 25, town 6 south, of range 11 west, in the district of land offered for sale at Vincennes, among the several owners and proprietors of the same, by the commissioners appointed for that purpose by the Vanderburgh circuit court at its March term, 1833, as by the records will appear; and that said commissioner report his proceedings to this court at the ensuing term thereof.

And now (that is to say) at the March term of the court aforesaid, in the year one thousand eight hundred and thirty-seven, on motion, further time until the next term of this court is given the commissioner heretofore appointed herein to make report.

And now (that is to say) at the September term of the court aforesaid, in the year last aforesaid, on motion of the complainants, this

cause is continued until the next term of this court, and further time to the next term of this court is given the commissioner appointed in this cause to make his report.

And, that is to say, at the March term of the court aforesaid, in the year one thousand eight hundred and thirty-eight, this cause is continued till the next term of this court.

And now, that is to say, at the June term of the court aforesaid, in the year last aforesaid, on motion of the defendants by their attorney, this cause is continued till the next term of this court.

And now, that is to say, at the September term first aforesaid, of the court aforesaid, in the year first aforesaid, comes the commissioner heretofore appointed herein, and makes report as follows, to wit: The undersigned commissioner, appointed by the circuit court of Vanderburgh County, in chancery sitting, in the case wherein John Law and others are complainants, and William P. Hall is defendant, to make a deed to the complainants, in pursuance to a decree of the said court in said cause, reports that on the 30th day of September, 1836, he made, executed, and delivered to the complainants a deed for the premises described in said decree, in accordance with said decree, which is herewith submitted and acknowledged.

September 24th, 1838.

SAMUEL HALL,
*Commissioner.*

Whereas, at the September term of the Vanderburgh circuit court, held at the court-house in the town of Evansville, in said county of Vanderburgh, on the fourth Monday of said month, the said circuit court, in a suit in chancery in said court, wherein John Law, Lucius H. Scott, James B. McCall, and William H. Law were complainants, and William P. Hall, a minor under the age of twenty-one years, was defendant, ordered, adjudged, and decreed, among other things, as follows, to wit: That Samuel Hall be, and he is hereby, appointed commissioner to make unto the said John Law, Lucius H. Scott, James B. McCall, and William H. Law, the complainants, a deed in fee-simple of all the right, title, and interest of the said William P. Hall of, in, and to two-sevenths of fractional section twenty-five, in town six south, of range eleven west, in the district of lands offered for sale at Vincennes, and being the same tract or parcel of land conveyed by Nathaniel Ewing to William Prince, and which said tract, under an order of the Gibson probate court, was ordered to be sold as the property of said Prince, then deceased, and which was purchased by one William Daniel, and by him conveyed to the said William P. Hall, the defendant, as in said bill mentioned, and being the same tract or parcel of land assigned to said William P. Hall in the partition of said fractional section twenty-five, in town six south, of range eleven west, in the district of lands offered for sale at Vincennes, among the several owners and proprietors thereof by the commissioner appointed for that purpose at the March term of said Vanderburgh circuit court, 1833, as by reference to the record will appear.

Now, know all men by these presents, that I, the said Samuel Hall, commissioner aforesaid, of and in pursuance of said decree as such commissioner, do hereby, by force of these presents, sell, bargain, alien, convey, and confirm, transfer, and set over to the said John Law, Lucius H. Scott, James B. McCall, and William H. Law, all the right, title, interest, claim, or demand, either at law or in equity, of said William

P. Hall, of in, and to two-sevenths of fractional section twenty-five, in town six south, of range eleven west, in the district of land
6 offered for sale at Vincennes, lying and being in the county of Vanderburgh, and State of Indiana, and being the same tract or parcel of land conveyed by Nathaniel Ewing to William Prince, and which said tract, under an order of the Gibson probate court, was ordered to be sold as the property of the said Prince, deceased, and which was purchased by one William Daniel, and by him conveyed to said William P. Hall, and being the same tract afterwards assigned to said William P. Hall in a partition of said fractional section twenty-five, in town six south, of range eleven west, in the district of lands offered for sale at Vincennes, among the several owners and proprietors of the said fractional section twenty-five by the commissioners appointed for that purpose at the March term of the Vanderburgh circuit court, 1833, as by said record of said court will appear, to have and to hold the said tract or parcel of land above described to the said John Law, Lucius H. Scott, James B. McCall, and William H. Law, their heirs and assigns forever, in as full and ample a manner as the said William P. Hall did, might, or could claim and possess the same by virtue of the conveyance to him above recited.

In witness whereof I have hereunto set my hand and affixed my seal this 30th day of September, 1836.

SAMUEL HALL. [SEAL.]

STATE OF INDIANA,
*Vanderburgh County, ss:*

I, Charles D. Bourne, clerk of the Vanderburgh circuit court, do certify that Samuel Hall came before me this day in open court and acknowledged the above and foregoing deed to be his voluntary act and deed (as commissioner therein set forth) for the purposes therein mentioned.

Given under my hand and seal this 24th day of September, A. D. 1838.

[SEAL.] C. D. BOURNE.

Which said deed is now here by the court approved and confirmed.

And afterwards, to wit, on Tuesday, the 27th day of October, A. D. 1874, said day being the eighth day of the special October term, A. D. 1874, of said circuit court of the United States, the following further proceedings were had, to wit:

Comes now the respondent, by Messrs. Iglehearts and Mr. Dyer, his counsel, and files his answer to the complainants' bill in thewords and figures following, to wit:

In the circuit court of the United States for the district of Indiana.

CATHARINE HALL, MARIA H. HALL, SALLIE G. Brownlee
*vs.*
WILLIAM H. LAW.

The answer of the defendant, William H. Law, to the bill of complaint of said Catharine Hall and others, complainants, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for an-

swer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answer saith—

This defendant expressly and positively denies that said complainants, or any of them, now, or at any other time, were the owners in fee-simple or otherwise of said real estate in said bill mentioned, or any part thereof, or that they or any or either of them are or ever were tenants in common or otherwise of said lots or tracts of land or any part thereof, or that they or any or either of them are seized of the same by a good and indefeasable legal title thereof from William P. Hall by descent; on the contrary, said complainants nor any nor either of them were ever seized of any estate or said lands either legal or equitable, and this defendant says that at the time of the death of said William P. Hall he was not seized of any interest in said lands, nor did he at said time either have or claim any title thereto, or to any portion thereof.

This defendant, further answering, admits that the complainants are related to said William P. Hall in the manner alleged in said bill of complaint, that they are his heirs-at-law, and that he departed this life about the time stated in the said bill of complaint, but this defendant expressly and explicitly denies that said William P. Hall died seized in fee-simple or otherwise of said lands, lots, and blocks, or any or either of them.

The defendant, further answering, says that true it is that he claims to be the owner in fee-simple of said lots, but he denies that he claims said fee of said lots and blocks under and by virtue of the proceedings in said suit in chancery mentioned in said bill of complaint, and the record of which a copy is set out as an exhibit to the said bill of complaint; on the contrary thereof the defendant holds all said lots and blocks and parts of blocks by a good and indefeasable title to the whole thereof derived through mesne conveyances from the Government of the United States. And the defendant further answering, avers and charges that he and those under whom he claims, and from whom he derives his title, about the year 18 became the owners of the whole of fractional section 25, in which said lots are situate; that they 7 thereupon laid off and platted the same into blocks and lots and laid out and caused to be laid out, graded and improved streets and alleys therein, and sold parts thereof, and the same were improved and occupied by the owners and purchasers; that from that time until the present time said defendant, and those under whom he claims, have held, claimed, paid taxes upon, made side-walk improvements along and opposite to the same, and have continually and notoriously claimed exclusive ownership of the same, and especially in exclusion of said complainants, said William P. Hall, and all others under whom said complainants claim, for more than thirty-eight years; and this defendant says that said William P. Hall, during all the time from the purchase of said real estate by the defendant, and those under whom he claims, till his death in 1857, as alleged in said bill of complaint, resided in the town of Princeton in an adjoining county to said real estate; that for ten years prior to his death he was a practicing lawyer, and practiced law in the city of Evansville, a part of the time holding the office of prosecuting attorney in Vanderburgh County, and during all said time said William P. Hall well knew that the defendant and those under whom he claims were claiming and exercising absolute ownership over said fractional section, including the lands described in said bill, yet during all that time he never had or claimed or pretended to have or claim any

title or interest in said property, nor have the complainants made any such claim until within the last year or eighteen months.

As to the allegations in said bill concerning the service of process upon said William P. Hall in said suit in chancery, the tender age of said William P. Hall, and the other allegations concerning said suit and proceedings, this defendant was not present in court himself and has no knowledge of or information concerning the same other than such as he derives from the record.

This defendant admits that he is the same William H. Law who was one of the complainants in said suit in chancery; but he denies that the property mentioned in said decree in said cause embraces the property mentioned in said complainants' bill of complaint herein; on the contrary, while the seventeen acres of ground mentioned in said proceedings lay east of Pigeon Creek, all the property mentioned in the bill of complaint herein lies west of said Pigeon Creek.

This defendant avers that at no time was said William P. Hall the owner in fee of the undivided two-sevenths ($\frac{2}{7}$) of said fractional section 25; but he avers and charges that he pretended so to be prior to the 1st of March, 1833; but that by certain proceedings in partition in the Vanderburgh probate court, wherein said Hall was one of the defendants, a decree was rendered whereby said Hall's pretended share of said section was set off to him in severalty, to wit, seventeen acres on the east side of said Pigeon Creek, and the other portions of said fractional section were set off to those under whom the defendant claims.

A copy of the complete record of said proceedings of said court, marked Exhibit A to answer, is herewith filed, which said proceedings were held in a court of competent jurisdiction, and having the jurisdiction of the persons of the parties thereto and of the subject matter, and by which in said proceedings said tract was so set off to the said William P. Hall and the partition duly confirmed by the court, whereby the said William P. became barred of any pretended right which he might have had to said property in the complaint.

That from the time of said partition, which occurred about the year 1834, the ownership and possession of said property followed said partition, and thenceforth neither William P. Hall nor the complainants ever had ownership, possession, claim, or dominion over the property mentioned in said bill of complaint. And this defendant says that because said complainants have slept upon their rights, because their pretended right of action was perfect in William P. Hall, who was then of full age, more than twenty years before the commencement of this suit, and because the pretended claim of said complainants is a stale claim, he insists upon the statute of limitations and lapse of time, because of both of which said complainants' bill of complaint is without equity.

And the defendant, further answering, says that the said complainants' bill of complaint is manifestly without equity, in this, that said complainants are out of possession, and the pretended title which they pretend to set up is a pretended legal title, and not an equitable title; wherefore said complainants, if they have any claim at all, have a full, adequate, and complete remedy at law; wherefore said defendant insists that said complainants' bill of complaint may be dismissed. Without this, that any matter or thing not traversed, denied, nor confessed and avoided is true.

And having fully answered, this defendant prays that he may be discharged with his costs.

And as to the first and second interrogatories, this defendant says that inasmuch as the said interrogatories are in relation to a record

which relates to other lands than those mentioned in the bill, but which are likely to become the subject of litigation between complainants and defendant in another suit, this defendant says they are impertinent, fishing interrogatories, and he prays to be discharged from answering the same.

W. H. LAW.

ASA and J. E. IGLEHEART and
AZRO DYER,
*Solicitors for Defendant.*

8 UNITED STATES OF AMERICA,
*District of Indiana, ss:*

William H. Law, being duly sworn, does depose and say that he is the defendant named in the foregoing suit and answer; that he has read the same and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true.

W. H. LAW.

Subscribed and sworn before me this 27th day of October, 1874.

J. D. HOWLAND, *Clerk.*

*Exhibit A, filed with answer.*

Vanderburgh circuit court, March term, 1833.

STATE OF INDIANA,
*Vanderburgh County, ss:*

Pleas at the court-house, in the town of Evansville, in the county of Vanderburgh, and State of Indiana, on the 12th day of March, in the year of our Lord one thousand eight hundred and thirty-three, before William Olmstead and John M. Dunham, associate judges of the Vanderburgh circuit court.

Be it remembered that heretofore, to wit, on the twelfth day of September, in the year of our Lord one thousand eight hundred and thirty-two, at a circuit court bolden at the court-house aforesaid, in the town, county, and State aforesaid, before the judges aforesaid, it being there proved to the satisfaction of the court that David Miller hath given due and legal notice that he would on the third day of this court make application for the appointment of commissioners to divide among the several proprietors thereof fractional section number 25, in township number 6 south, of range number eleven west, in the district of land offered for sale at Vincennes:

Now, therefore, on his motion, it is ordered that Robert M. Evans, Alanson Warner, and Horace Dunham be and they are hereby appointed commissioners to divide said fractional section, according to law, between the several proprietors thereof, and that they make report to this court at the next term of this court.

And now here the commissioners heretofore appointed to make partition herein make the following report, to wit:

10 Beginning at a stake at the northwest corner of said section, running thence south 6 degrees and 30 minutes east, 21 chain to a stake on the bank of the Ohio River, thence down the river, meandering with the same, north 70 degrees and 30 minutes west 5 chain to a

stake, thence north 76 degrees west 13 chain and 50 links to a stake, thence (crossing the mouth of Pigeon Creek) north 83 degrees west 4 chain and 50 links to a stake, thence south 73 degrees west 21 chain and 50 links to a stake, thence south 65 degrees and 38 minutes west 14 chain 50 links to a stake, thence south 51 degrees and 30 minutes west 5 chain and 50 links to a stake, thence south 44 degrees and 45 minutes west 8 chain to a stake, thence south 38 degrees and 30 minutes west 7 chain and 75 links to a stake at the southwest corner of said section, thence north 6 degrees and 30 minutes west 34 chain 30 links to a stake at the northwest corner of said section, thence to the beginning, containing one hundred and fifty acres.

March 7, 1833.

CHESTER ELLIOTT,
*D. I. V. C.*

The honorable the judges of the circuit court of Vanderburgh County:

The undersigned, commissioners appointed by your honorable body to divide fractional section number 25, in township number 6 south of range number eleven west, in the Vincennes district, report that they have discharged that duty. They employed Chester Elliott, esq., who proceeded to lay out said section agreeably to the outer boundaries as delineated on the foregoing plat, by which said section was found to contain one hundred and fifty-one acres.

Your commissioners thence proceeded to divide the same among the several claimants, as follows, to wit: Lot number one (1) beginning at the northeast section, running thence west (at a variation of 6 degrees and 30 minutes) 9 chain two links to a stake, thence south, at the same variation, 17 chain 4 links to a stake on the bank of the Ohio River, thence up the same to a stake, the southeast corner of said section, thence north (same variation) 21 chain to the beginning, containing seventeen acres, being one seventh part in point of value of said section, which said lot your commissioners assign to the heirs of Charles Smith, late of Knox County, deceased.

Lot number two (2) begins at the northwest corner of lot number (1) one, runs west to the middle of Pigeon Creek, 8 chain 50 links, thence down the chute of said creek to the Ohio River, thence up said river, with the meanders thereof, to the southwest corner of lot number (1) one, thence 17 chains 4 links to the beginning, estimated in point of value at two-sevenths of said section, and containing (17) seventeen acres, which your commissioners assign to William P. Hall, of Gibson County.

Lot number (3) three begins at the centre of Pigeon Creek at the northwest corner of lot number (2) two, running thence west 20 chain 30 links to a stake at the half mile corner of said section, thence south 17 chain to the Ohio River, thence up said river, with the meanders thereof, to the centre of Pigeon Creek, thence up said creek along the centre thereof, to the beginning, containing 27 acres, estimated in point of value worth two sevenths of said section, and which your commissioners assign to Daniel Miller, esq.

Lot number (4) begins at the northwest corner of said lot number (3) three, running thence west 21 chain 35 links to a stake, thence south 21 chain 45 links to the Ohio River, thence up the same, with the meanders thereof to the southeast corner of lot number (3) three, thence north 17 chain to the beginning, containing 40 acres, estimated in point of value as one seventh part of said section, and which your commissioners assign to the heirs of William Jones, late of Knox County, deceased.

Lot number (5) five begins at the northwest corner of lot number (4)

four, running thence west 18 chain 35 links to a stake, the northwest corner of said section, running thence south (same variation) 35 poles 46 links to the southwest corner of said section, on the bank of the Ohio River, thence up the same, with the meanders thereof, to the southwest corner of lot number (4) four, thence north 21 chain 45 links to the beginning, 50 acres, estimated in point of value at one seventh part of said fraction, and which your commissioners assign to the heirs of John Johnson, late of Knox County, deceased, as reference in each case to the foregoing plat will more fully show; all of which is respectfully submitted.

March 8, 1833.

R. M. EVANS,
A. WARNER,
H. DUNHAM,
*Commissioners.*

STATE OF INDIANA,
*Vanderburgh County, ss :*

Before me, the undersigned, a justice of the peace in and for the county and State aforesaid, Robert M. Evans, Alanson Warner and Horace Dunham, commissioners appointed by the circuit court of the county aforesaid, to divide fractional section number 25, in township number 6, south of range number eleven west, in the Vincennes land district, among the several claimants thereof, and made oath that they would honestly and faithfully execute the trust reposed in them as commissioners as aforesaid.

Given under my hand and seal this 12th day of March, 1838.

[SEAL.] N. ROWLEY, *J. P.*

11 STATE OF INDIANA,
*Vanderburgh County, ss :*

Before me, the undersigned, one of the aforesaid judges of the circuit court of Vanderburgh County, in the State aforesaid, personally appeared the above-named Robert M. Evans, Alanson Warner and Horace Dunham, commissioners as aforesaid, and acknowledged the foregoing plat, partition, and report hereto attached to be their voluntary act for the purposes therein specified.

Given under my hand and seal this 12th day of March, 1833.

[SEAL.] W. M. OLMSTED, *A. J. V. C.*

Which report of the commissioners aforesaid is by the court now here confirmed. And it is considered by the court here that the parties to the petition aforesaid pay the expenses of the partition as follows, to wit:

The commissioners' fees, viz:

| | |
|---|---|
| R. M. Evans, 4 days as commissioner | $4 00 |
| " 1 day making plat and returning | 1 00 |
| Total | $5 00 |
| Horace Dunham, 2 days as commissioner | $2 00 |
| Alanson Warner 2 days as commissioner | 2 00 |
| Total | $9 00 |

The owners of each tract in said plat mentioned one-fifth, and that

the owners of each tract in said plat mentioned pay their proportion of the expense of surveying said tract, as follows, viz:

| | |
|---|---|
| Chas. Smith's heirs | $4 24 |
| William Jones' heirs | 4 24 |
| John Johnson's heirs | 4 24 |
| Daniel Millier | 4 78 |
| William P. Hall (paid R. M. Evans) | 4 88 |

STATE OF INDIANA,
*Vanderburgh County ss:*

I, C. D. Bourne, clerk of the Vanderburg circuit court, do hereby certify that the above and foregoing is a true, full, and complete transcript of the proceedings in the above cause, as the same appears of record in my office.

Witness my hand and the seal of said court of Evansville this 16th day of March, A. D. 1836.

[L. S.] C. D. BOURNE, *Clerk.*

And afterwards, to wit, on Wednesday, the 28th day of October, A. D. 1874, said day being the ninth day of the special October term, A. D. 1874, of said circuit court of the United States, the following further proceedings in said cause were had, to wit:

Come now the complainants, by Mr. Marsh, their counsel, and file their exceptions numbered one, two, three, and four, in the words and figures following, to wit:

In the circuit court of the United States for the district of Indiana, at Evansville.

CATHARINE HALL, MARIA H. HALL, SALLIE G. Brownlee,
*vs.*
WILLIAM H. LAW.

An exception taken by the said complainants to the insufficient answer of the defendant to the said complainants' bill of complaint.

First. For that the said defendant has not to the best of his knowledge, remembrance, information and belief answered the matters set up in the complainants' bill respecting the proceedings had and determined in the Vanderburgh circuit court, a full and complete copy of which is set out in said bill marked Exhibit A.

Second. For that the said defendant hath not in said answer in that part thereof in which he sets up and pleads acquiescence of William P. Hall in the defendant's claim, pleaded a good estoppel or defence to the complainants' bill, and the said parties said answer is inconsistent and repugnant to the other portions of said answer and is insufficient in law.

Third. For that the said defendant hath not in the manner aforesaid answered and set forth in the matter required of him in answer to the first interrogatory of the complainants, set out in their bill of complaint.

12 Fourth. For that the said defendant hath not in the manner and form aforesaid fully answered the complainants' bill in making denial; that he does not claim the undivided two-sevenths of the land

mentioned in the said bill under the proceedings aforesaid set out in said Exhibit A, and does not answer the same sufficiently to show that he does not claim thereunder, the all of which particulars the said complainants except to the answer of the defendant as evasive, imperfect, and insufficient, and humbly pray that said defendant may be compelled to put in a full and sufficient answer to said bill of complaint.

CHAS. E. MARSH AND J. C. DENNY,
*Solicitors for Complainants.*

To the answer of said defendant and saith thereby that said respondents' answer is not sufficient in law to be answered unto by said complainants, whereupon comes the respondent by counsel and saith that his said answer is good and sufficient in law.

And the court, having heard the argument of counsel and being advised in the premises, doth now here sustain exception numbered one, and doth declare that the proceedings in partition in said answer mentioned be set out as an exhibit to said answer; and as to exception numbered two, three, and four, the court doth now here overrule the same.

And thereupon the said complainants, by Mr. Marsh, their counsel, doth now here withdraw exception numbered two.

And afterwards, to wit, on Tuesday, the 8th day of June, A. D. 1875, said day being the first day of the special June term, 1875, of said circuit court of the United States for the district of Indiana, the following further proceedings in said cause were had, to wit:

Now here, on motion of Messrs. Asa and J. E. Igleheart, solicitors for the respondents, a rule is entered requiring the complainants to file their replication by to-morrow morning.

And afterwards, to wit, on Friday, the 11th day of June, A. D. 1875, said day being the fourth day of the term of said court last aforesaid, the following further proceeding in said cause were had, to wit:

Comes now Mr. Marsh, of counsel for the complainants, and file their replication to the respondents' answer, in the words and figures following, to wit:

In the circuit court of the United States for the district of Indiana, at Evansville. In chancery.

CATHARINE HALL ET AL.
*vs.*
WILLIAM H. LAW.

The replication of Catharine Hall, Maria H. Hall, and Sallie G. Brownlee to the amended answer of William H. Law.

These replicants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied to by these replicants: without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true, and which matters and things

this replicant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill hath already prayed.

J. C. DENNY AND CHAS. E. MARSH,
*Solicitors and Counsel for Complainants.*

And afterwards, to wit, on Monday, the 14th day of June, A. D. 1875, said day being the sixth day of the special June term, 1875, of said circuit court, the following further proceedings were had, to wit:

By agreement of parties this cause was continued until the next term of this court.

And afterwards, to wit, on Friday, the 8th day of October, A. D. 1875, said day being the fifth day of the regular October term, 1875, of said circuit court of the United States, the following further proceedings in said cause were had, to wit:

And now here come the complainants and file their written proofs, and the defendant also files his written proofs, and withdraws the written admissions heretofore filed, and time is given the complainants till November 10th, 1875, to take rebutting testimony.

And afterwards, to wit, on Friday, the 7th day of April, A. D. 1876, said day being the fifth day of the regular term, A. D. 1876, of said circuit court of the United States for said district of Indiana, the following further proceedings in said cause were had, to wit:

13 *Decree.—Hall vs. Law.*

CATHARINE HALL, MARIA A. HALL, SALLIE G. Brownlee, *vs.* WILLIAM H. LAW. } Chancery.

And now come the complainants, by their solicitors, Denny and Marsh, and the defendant, by his solicitors, Dyer and Iglehearts, and this cause comes to be heard upon bill, answer, exhibits, and evidence, and the court having heard the proofs and allegations of the parties, and the arguments of counsel, and all things touching the same having been fully heard and considered, the court finds that the equity of the case is with defendant. It is therefore ordered, adjudged, and decreed that the complainants' bill of complaint be, and the same is hereby, dismissed. It is further ordered, adjudged, and decreed that the complainants pay the cost of this suit. And the said complainants now here except in all things to said finding and decree, and pray an appeal to the Supreme Court, which is granted upon the filing in due time their appeal bond, with approved security, in the penal sum of five hundred dollars, conditioned according to law.

COMPLAINANTS' TESTIMONY.

James Madison, President of the United States, to all to whom these presents shall come, greeting:

Know ye that Peter Jones, assignee of General W. Jones, having deposited in the Treasury a certificate of the register of the land office at Vincennes, whereby it appears that full payment has been made for the

fractional section number twenty-five, of township number six south, of range number eleven west of the second meridian line, of the lands directed to be sold at Vincennes by the act of Congress entitled "An act providing for the sale of the lands of the United States in the territory northwest of the Ohio, and above the mouth of the Kentucky River," and of the acts amendatory of the same; there is granted by the United States unto the said Peter Jones the fractional lot or section of land above described, to have and to hold the said fractional lot or section of land with the appurtenances unto the said Peter Jones, his heirs and assigns forever.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, on the twentieth day of April, in the year of our Lord one thousand eight hundred and twelve, and of the Independence of the United States of America the thirty-sixth.

[L. S.] JAMES MADISON.

By the President:
JAS. MONROE,
*Secretary of State.*

Recorded May 18th, 1836.
Exd.

W. T. T. JONES,
*Recorder*,
By C. D. BOURNE, *D. R.*

STATE OF INDIANA,
*Vanderburgh County, ss:*

I, S. B. Sansom, recorder in and for said county, do hereby certify that the above and foregoing is a full, true, and correct copy of what appears of record in my office in deed record, book "C," pages 619 and 620.

Witness my hand and official seal at Evansville, Ind., this 15th day of September, A. D. 1875.

S. B. SANSOM, *R. V. C.*

Know ye that Peter Jones and Sally, his wife, for and in consideration of eighty-two dollars and thirty-five cents to them in hand paid by Nathaniel Ewing, the receipt whereof they do hereby acknowledge, hath granted, bargained, and sold, and by these presents do grant, bargain, and sell to Nathaniel Ewing, his heirs, and assigns, forever, an undivided two sevenths, part of a lot of land designated in the patent by fractional section number twenty-five, township number six south, of the base line of range number eleven west of the second meridian, which said lot or fractional section contains one hundred and sixty-one acres and sixty one-hundredths, and was granted to the said Peter Jones by the United States by patent dated the twentieth day of April, one thousand eight hundred and twelve, to have and to hold the said undivided two-sevenths part of the above lot or section of land to Nathaniel Ewing, his heirs and assigns, forever, as tenants in common.

In witness whereof the above-named parties of the first part hath

hereunto set their hands and seals the eighth day of January, one thousand eight hundred and fourteen.

[SEAL.] PETER JONES.
[SEAL.] SALLY JONES.

Sealed and delivered in the presence of—
B. PARKE and
J. D. HOVY.

14 INDIANA TERRITORY:

Be it remembered that on the eighth day of January, 1814, personally come and appeared before me the subscriber, a judge of the general court of said Territory, the above named Peter Jones and Sally, his wife, and acknowledged the above indenture to be their act and deed and as such desired that the same might be recorded (the said Sally, wife of the said Peter Jones, being first examined separate and apart from her said husband freely consenting thereto).

In testimony whereof I have hereunto set my hand and seal the day and year above written.

[SEAL.] B. PARKE.

STATE OF INDIANA,
*Vanderburgh County, ss:*

I, S. B. Sansom, recorder in and for said county, do hereby certify that the above and foregoing is a full, true, correct and complete copy of what appears of record in my office in deed record book "A," pages 318 and 319.

Witness my hand and official seal, at Evansville, Ind., this 15th day of September, A. D. 1876.

S. B. SANSOM,
*R. V. C.*

This indenture, made and entered into this twelfth day of February, in the year of our Lord eighteen hundred and twenty-two, between Nathaniel Ewing and his wife, of the county of Knox and State of Indiana, of the first part, and William Prince, of the county of Gibson and State aforesaid, of the other part, witnesseth:

That for and in consideration of the sum of three hundred dollars to them in hand paid, the receipt whereof they do hereby acknowledge, they, the said Nathaniel Ewing and , his wife, have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said William Prince, his heirs and assigns, all their right, title, interest, and claim in and to two undivided seventh parts of a lot of land designated in the patent by fractional section number twenty-five, township number six south, of range number eleven west of the second meridian, which said lout or fractional section contains one hundred and sixty-one acres and sixty one hundredths, and wase granted to Peter Jones by patent bearing date the 20th day of April, A. D. 1812, and the above mentioned two-sevenths of which wase conveyed by said Jones and wife by deed bearing date 8th day of January, A. D. 18 4, to have and to hold the said undivided two sevenths of the said fractional section of land to him, the said William Prince, his heirs and assigns forever.

And the said Nathaniel Ewing and , his wife, do hereby covenant and bind themselves, their heirs, executors, and administrators,

to warrant and defend the said two-seventh parts of the said fractional section of land to the said William Prince, his heirs and assigns forever, free from the claim or claims of all and every person or persons whatsoever.

In testimony whereof, the said Nathaniel Ewing and , have hereunto set their hands and affixed their seals the day and year aforesaid.

[SEAL.] NATHANIEL EWING.

Signed, sealed and delivered in the presence of—
ISAAC BLACKFORD.

STATE OF INDIANA,
*Knox County, ss :*

Personally appeared before me, the undersigned, the above named Nathaniel Ewing, and acknowledged the above to be his act and deed for the purposes therein specified.

Given under my hand and seal this 12th day of April, eighteen hundred and twenty-one.

[SEAL.] ISAAC BLACKFORD,
*One of the Judges of the Supreme Court of the said State.*

STATE OF INDIANA,
*Vanderburgh County, ss :*

I, S. B. Sansom, recorder in and for said county, do hereby certify that the above and foregoing is a full, true, correct, and complete copy of what appears of record in my office in deed record book "A," page 318.

Witness my hand and official seal, at Evansville, Ind., this 15th day of September, A. D. 1876.

S. B. SANSOM,
*R. V. C.*

To all to whom these presents shall come, greeting :

Whereas John C. P. Harrison, John I. Neely, and Samuel Hall, administrators of all and singular the goods and chattels, rights, credits, and effects of William Prince, deceased, late of Gibson County, in the State of Indiana, heretofore, to wit, on the 15th day of April, 1836, exposed to public sale at the court-house door in the town of Princeton, in said county, in pursuance of an order of the Gibson circuit court, all the real estate of said deceased, the same having been first legally advertised; and whereas at said sale the administrators then and there, amongst other tracts, offered for sale all the right, title, interest, and claim of the said William Prince, at the time of his death, in and
15 to forty-six acres of land lying and being in the county of Vanderburgh, in the State aforesaid, it being two undivided seventh parts of fractional section twenty-five, in township six south, of range eleven west, containing about one hundred and sixty-one acres; and whereas William Daniel, of the county of Gibson aforesaid, became the purchaser of said interest in said tract of land at and for the sum of thirty-one dollars, it being the most that could be obtained for the same; and whereas the administrators aforesaid at said sale also offered for sale all the right, title, interest, and claim of the said William Prince, deceased, at the time of his death, in and to sixty-five acres of land, it being part of lot number twenty-seven, in the militia donation, south of White River; and whereas the said William Daniel became the pur-

chaser of said interest in said last mentioned tract of land at and for the sum of five dollars, it being the most that could be obtained for the same; and whereas the administrators aforesaid at the August term of the Gibson circuit court, in the year of our Lord one thousand eight hundred and twenty-six, returned a sale bill of their proceedings at the sale aforesaid, which was then and there approved of by said court, and the administrat*ed* aforesaid were then and there by an order of the same court directed to convey to the respective purchasers at said sale the several tracts of land by them respectively purchased.

Now, therefore, this indenture witnesseth, that the said John C. S. Harrison, John I. Neely, and Samuel Hall, administrators as aforesaid, in pursuance of the order aforesaid, and for and in consideration of the sum of thirty-six dollars, to them in hand paid by the said William Daniel at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell unto the said William Daniel, his heirs and assigns forever, the aforesaid described interests of the said William Prince in and to the said two tracts of land and every part and parcel thereof, with the appurtenances, to have and to hold the said interest in said described tracts of land unto the said William Daniel, his heirs and assigns to his and their own proper use, benefit, and behoof forever.

In testimony whereof the said John C. S. Harrison, John I. Neely, and Samuel Hall, administrators as aforesaid, have hereunto set their hands and seals this day of October, 1826.

J. C. S. HARRISON. [SEAL.]
SAMUEL HALL. [SEAL.]
JOHN I. NEELY. [SEAL.]

Witness:
JAMES EVANS.
JOHN MCCLURE.

STATE OF INDIANA,
*Gibson County, ss:*

Before me, the undersigned, a justice of peace in and for the county and State aforesaid, personally came the within-named John C. S. Harrison, John I. Neely, and Samuel Hall, administrators of the estate of the said William Prince, deceased, and acknowledged the within deed to William Daniel to their voluntary act for the purposes therein mentioned.

Given under my hand and seal this 30th day of October, 1826.

JAMES EVANS,
*J. P. G. C.*

STATE OF INDIANA,
*Gibson County, ss:*

I, J. R. Montgomery, clerk of the Gibson circuit court, do hereby certify that James Evans, esq., whose signature appears to the above certificate of acknowledgment, was, on the 30th day of October, 1836, an acting justice of the peace within and for said county, duly commissioned and qualified as such, and I am acquainted with his handwriting and his signature is genuine, and full faith and credit is and ought to be given to all his official acts as such.

In testimony whereof I have hereunto set my hand and official seal at Princeton this 4th day of October, A. D. 1836.

[L. S.] J. R. MONTGOMERY,
*Clerk.*

Recorded November 2d, 1836.

E. D. BOURNE,
*Recorder.*

Ex'd.

STATE OF INDIANA,
*Vanderburgh County, ss:*

I, S. B. Sansom, recorder in and for said county, do hereby certify that the above and foregoing is a full, true, and correct copy of what appears of record in my office in deed-record book D, pages 355, 336, and 337.

Witness my hand and official seal at Evansville, Ind., this 15th day of September, A. D. 1875.

S. B. SANSOM, *R. V. C.*

This indenture, made this day of , in the year of our Lord one thousand eight hundred and thirty-one, between William Daniel and Elizabeth, his wife, of the town of Princeton, in the county of Gibson, State of Indiana, of the first part, and William P. Hall of the second part, witnesseth:

That the said William Daniel and Elizabeth, his wife, for and in consideration of thirty dollars to them, the said William and Elizabeth, in hand paid, at or before the sealing and delivery hereof, the re-
16 ceipt whereof is hereby acknowledged, have and each of them hath given, granted, bargained, and sold, and by these presents do and each of them doth give, grant, bargain, and sell unto the said party of the second part, his heirs and assigns forever, all their right, title, interest, and claim in and to forty-six acres of land lying and being in the county of Vanderburgh, in the State aforesaid, it being two undivided seventh parts of fractional section twenty-five, in township six south, of range eleven west, containing about one hundred and sixty-one acres, it being the same tract or parcel of land which was conveyed by John C. S. Harrison, John I. Neely, and Samuel Hall, administrators of the estate of William Prince, deceased, to the said William Daniel, by the deed bearing date the day of October, 1826, together with all and singular the rights, members, and appurtenances to the same belonging or in anywise appertaining: To have and to hold the said tract or parcel of land to the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever.

And the said parties of the first part of these presents, the said tract or parcel of the land before described bargained and sold unto the said party of the second part, his heirs, and against the claim or claims of themselves, the said William Daniel and Elizabeth, his wife, and all persons claiming by, through, or under them, or either of them, shall and will warrant and forever defend; but it is expressly agreed and understood that the said William Daniel and Elizabeth, his wife, are not to be held liable for said tract of land, or any part thereof, in case the title hereby conveyed should prove insufficient or defective, nor are they, or either of them, in any event to pay back the said sum of thirty dollars or any part thereof.

In testimony whereof the said parties of the first part of these presents have hereunto set their hands and seals this day of , 1831.
The words "and Elizabeth his wife" interlined before signing.

WILLIAM DANIEL. [SEAL.]
ELIZABETH DANIEL. [SEAL.]

Witness:
JAMES EVANS.

STATE OF INDIANA,
*Gibson County, ss:*

Before me, the undersigned, a justice of the peace in and for the county and State aforesaid, personally appeared the above-named William Daniel and Elizabeth, his wife, and acknowledged the above deed of conveyance to be their voluntary act and deed (the said Elizabeth being of lawful age), and being by me examined separate and apart from the said William Daniel, after having the full contents of said deed made known unto her by me on such separate examination, acknowledged and declared that she did voluntarily and of her own free will and accord, and as her act and deed, seal and deliver the same without any coercion or compulsion from the said William Daniel.

[SEAL.] JAMES EVANS.

STATE OF INDIANA,
*Gibson County, ss:*

I, J. R. Montgomery, clerk of the Gibson circuit court, do hereby certify that James Evans, esq., whose signature appears to the above certificate of acknowledgment, was on the 24th day of October, 1831, an acting justice of the peace within and for said county of Gibson, duly commissioned and qualified as such, and I am acquainted with his handwriting, and his signature is genuine, and full faith and credit is and ought to be given to all his official acts as such.

In testimony whereof I have hereunto set my hand and official seal, at Princeton, this 4th day of October, A. D. 1836.

J. R. MONTGOMERY, *Clerk.*

Recorded Nov. 2d, 1836.

C. D. BOURNE,
*Recorder.*

Ex'd.

I, S. B. Sansom, recorder in and for said county, do hereby certify that the above and foregoing is a full, true, correct, and complete copy of what appears of record in my office in deed-record book D, pages 337, 338, and 339.

Witness my hand and official seal, at Evansville, Ind., this 15th day of September, A. D. 1876.

S. B. SANSOM, *R. V. C.*

Be it remembered that at a circuit court held at the court-house in Princeton, for the county of Gibson and State of Indiana, on Monday, the 20th day of February, A. D. 1826, there were present the honorables James R. E. Goodlett, presiding judge, and Thomas Montgomery and Thomas Alcorn, associates. The following proceedings among others were had, to wit:

THE ADMINISTRATORS OF WM. PRINCE, DECEASED,
*vs.*
THE HEIRS OF SAID DECEASED.

Now, at this time, come the administrators aforesaid, and it appearing by the sheriff's return to the summons herein issued that Samuel Hall and Elizabeth, his wife, formerly Elizabeth Prince, Nancy Prince, George Prince, and Henry Prince, the heirs and legal representatives of said William Prince, deceased, had been duly summoned to appear at the present term of this court to show cause why the real
17 estate of said decedent should not be sold to satisfy the debts against the same, and they being three times severally called, came not, but make default. It also appears to the satisfaction of the court that the whole of said real estate mentioned in said inventory will not probably more than supply the deficiency of the personal in paying the debts against said estate; whereupon it is ordered and decreed by the court that the whole of the real estate aforesaid set out in said inventory be sold at public auction by the administrators aforesaid (they first entering into additional bond and surety in the sum of five thousand dollars, conditioned as the law requires) to satisfy the demands against said estate, so far as the same will go, after first paying the necessary expenses, and giving twenty days' notice of the time and place of said sale, etc.

Afterwards, at the August term, 1826, of said court, the following additional proceedings were had, to wit:

And now, at this time, come the administrators of the estate of William Prince, deceased, and thereupon they produced an inventory and sale-bill of the real estate of the said William Prince, deceased, agreeably to the order of this court at the last term, which said inventory and sale-bill were examined and approved of by the court, and ordered that the administrators of the said estate of William Prince, deceased, be authorized and required to make deeds of conveyance to the said several purchasers of the said real estate agreeably to the law in such cases made and provided

STATE OF INDIANA,
*Vanderburgh County, ss:*

I, Wm. P. Welborn, clerk of the circuit court in and for said county and State aforesaid, certify the foregoing to be a full, true and complete copy of the record, orders and judgments of said court in relation to the sale of the real estate of William Prince, deceased, as the same appears of record in my office.

In attestation whereof I have hereunto set my hand and affixed the seal of said court, at Princeton, this 17th day of March, A. D. 1873.

[L. S.] WM. P. WELBORN, *Clerk.*

Be it remembered, that on the 25th day of May, 1825, the following petition was filed in the office of the clerk of the Gibson circuit court:

To the honorable circuit court of Gibson County, in chancery sitting:

Humbly complaining showeth unto your honors your orators J. C. S. Harrison, J. I. Neely and Samuel Hall, administrators of all and singular the goods and chattels, rights, credits and effects which were of

William Prince, late of said county of Gibson, deceased, that they have obtained beyond a doubt that said estate is insolvent, and as such, claim a settlement with this honorable court. The amount of the sales of the personal property as per inventory filed is three hundred and forty-one and sixty seven and one-half hundredths dollars. The debts due the estate, from the best information we have been able to obtain, will form an amount of something like two thousand dollars, out of which it is not believed that the sum of one hundred dollars can be realized. All the large debts are owed by persons notoriously insolvent, most of the others on persons who have either left this county to parts unknown, or are in such circumstances as renders it useless to see them. Having advertised the insolvency of the estate, we have taken an inventory of the real property, which amounts to fourteen hundred and twenty-five hundredths dollars. No order of court has yet been applied for to have this property sold. The debts against the estate have not been precisely ascertained, but is confidently believed that they will not fall short of seven thousand dollars.

Therefore, your orators would humbly pray to take advantage of the fourteenth section of an act of the general assembly of the State of Indiana, entitled, "An act providing for the settlement of decedent estates and other purposes," approved January the 26th, 1824. And your orators further pray your honors to grant unto them such relief in the premises as may seem agreeable to equity and good conscience, and your petitioners pray.

J. C. S. HARRISON,
J. I. NEELY,
SAMUEL HALL,
*Administrators.*

And afterwards, to wit, on the 18th day of August, 1825, an inventory was filed in the office of the clerk of said Gibson circuit court, which reads as follows, to wit:

*An inventory of the real property belonging to the estate of William Prince, deceased, appraised by L. M. Evans and J. K. Sloan, on the 19th day of May,* 1825.

| | |
|---|---|
| Two undivided seventh parts of fractional section number 25, township 6 south of range eleven west of the second meridian, containing 161 acres—two-sevenths being forty-six acres | $180 00 |
| Three hundred acres of land adjoining Severns, in Patoka, commonly called the Upper Bridge Tract | 600 00 |
| East half of the southeast quarter of section 11, T. 6 S., R. 14 W., 80 acres | 160 00 |
| Lot number 38, in the original plan of Princeton | 25 00 |
| An interest in reversion in lot number 31, in Sullivan Town | 100 00 |
| 18 An interest in reversion in the northwest quarter of sec. 4, T. 2, R. 11; also the north half of the southwest quarter of said section | 300 00 |
| Sixty-five acres, part of lot No. 27, in M. D. | 5 00 |
| Eighty-five acres, part of lot No. 115, in M. D. | 5 00 |
| Fifty acres, part of lot No. 22, in M. D | 5 00 |
| Forty-five acres, part of lot No. 125, in M. D | 5 00 |
| An in reversion of a lot in Vincennes containing 18 by 25 | |

toisses, (from measure) facing two streets, facing the lot where John Brown lived in 1825 in the S. W..... 20 00
Also another lot in said town of Vincennes containing 22 toisses (from measure) square, exclusive of streets, joining a lot owned by N. Ewing, in 1820, in the N. E., and facing two streets..... 1,425 00
A true appraisement.

R. M. EVANS,
JAMES K. SLOAN,
*Appraisers.*

J. I. NEELY,
SAMUEL HALL,
*Administrators.*

STATE OF INDIANA,
*Gibson County, ss :*

Before me, the undersigned, a justice of the peace, in and for the county and State aforesaid, personally came Robert M. Evans and James K. Sloan, who made oath according to law well, truly and faithfully to appraise the real property of the estate of William Prince, deceased.

Given under my hand and seal this 19th day of May, 1825.

JAMES P. EVANS, *J. P.*

STATE OF INDIANA,
*Gibson County, ss :*

Before the undersigned personally appeared, J. I. Neely, and Samuel Hall, who made oath that the within is a true list and appraisement of the real estate of said William Prince, deceased, so far as have come to their knowledge.

Given under my hand and seal this 19th day of May, 1825.

JAMES PRINCE, *J. P.*

And afterwards on the 25th day of August, 1826, the following sale bill was filed in the office of the clerk of said court, which sale bill reads in the words and figures following, to wit:

*Sale bill of the real estate of William Prince, deceased, by his administrators in pursuance of an order of the Gibson circuit court, made the 15th day of April, 1826.*

| Description. | Purchaser's name. | Amount. |
|---|---|---|
| Three hundred acres land adjoining Severns on Patoka | Walter Nelson | $25 00 |
| Forty-six acres, being two undivided seventh parts of frac. sec. 25 T. 6 S. R. 11 W | William Daniel | 31 00 |
| Eighty acres, being the E. half of S. W. quar. of sec. 11, T. 6 S., R. 14 W | Walter Nelson | 32 00 |
| Lot No. 38 in the original plan of Princeton | Thomas Prince | 20 00 |
| Sixty-five acres, part of lot No. 27 in M. D. | William Daniel | 20 00 |
| Eighty-five acres, part of lot No. 115 in M. D. | Thomas J. Evans | 5 00 |
| Fifty acres, part of lot No. 22 in M. D | Robert M. Evans | 5 00 |
| Forty-five acres, part of lot No. 125 in M. D. | Robert M. Evans | 1 00 |
| Interest in reversion of lot No. 35 in Princeton | Thomas Prince | 1 00 |
| Interest in reversion of a lot in Vincennes, containing 18 by 25 toisses facing 2 sts., and joining the lot where Jno. Brown lived in 1820 on the S. W | Charles Harring | 10 00 |
| Lot in the town of Vincennes, containing 22 toisses square, exclusive of streets, joining a lot owned by N. Ewing in 1820 in the N. E. and facing two streets, being No. 134 | J. B. Laplant | ..... |
| Interest in reversion in the N. W. qr. of sec. 4, T. 3 S., R. 11 W | Paul Laplant | 15 00 |
| Also N. half of the S. W. qr. of said section | Thomas Prince | 5 00 |
| Total | ..... | $155 00 |

We, the undersigned, administrators of the estate of William Prince, deceased, do certify that the above is a true account of the sale of the real estate of said decedent, the same being made at public auction agreeable to notice, on the day above written.

J. I. NEELY,
J. C. S. HARRISON,
SAMUEL HALL,
*Administrators.*

19 Depositions of witnesses in the cause in chancery in the circuit court of the United States, for the district of Indiana, at Evansville, wherein Catharine Hall, Sallie G. Brownlee and Maria H. Hall, are complainants, and William H. Law is the defendant, taken in pursuance of the notice and argument hereunto annexed, and in manner and form as herein certified.

GEORGE B. GRAFF, of lawful age, being duly sworn, deposeth as follows:

Question. State your name, age, occupation and place of residence, and what opportunities you have had of knowing William P. Hall, deceased, of Princeton, Gibson County, Indiana, how long you knew him, of what kindred he was to the complainants in this suit; what you know, if anything, about William P. Hall's claim, if he ever made any, to the undivided two-sevenths part of fractional section twenty-five, at the mouth of Pigeon Creek, in the city of Evansville, county of Vanderburgh, and State of Indiana; what you know, if anything, about said William P. Hall having been a practicing lawyer during his lifetime, where he resided all his life, and what his physical and mental condition was after he became of age; what you know in relation to his acquiescence in any claim of the defendant, William H. Law, to said undivided two-sevenths part of said fractional section twenty-five, and all that you may know in relation to his ownership, or claim of ownership of said land.

(Objected to by defendant's counsel because leading, and much of it irrelevant.)

Ans. George B. Graff. I reside at Omaha, Nebraska. I am a physician. My age is fifty-nine. I knew William P. Hall from 1843 up to the time of his death. About 1847—before he attained his majority—he married my sister, and I resided during the entire time in the same town (well, some short time I lived in Owensville during that time—some six months, probably—but in the county.) I have often, very often, heard him speak of a claim to property at the mouth Pigeon Creek, (which he deri ed from his grandfather, Judge Prince, for whom he was named), in the city of Lamasco, Vanderburgh County, Indiana. I don't remember the year, but while Judge Lockhart was in Congress, he wrote and I saw a letter which he wrote to William P. Hall, giving the opinion of the Attorney General of the United States of his title to this land. He then talked more about it, and expressed his determination to at once take possession of it. About 1852 he went with William S. Palmer, an attorney, to Evansville, for the purpose of taking it into his possession. They turned it into a drunken spree and returned home. Palmer died soon after and the thing failed, or at least that part of it. Palmer died in 1852, and that was but a short time previous to his death. After that I saw a correspondence with James G. Jones, an attorney of this city, in relation to commencing suit for the land, or proceedings of some sort. I don't know what the result of that was, but I saw the correspondence.

Scott, and James McCall and their proprietary interests in Vanderburgh County?

Ans. I know all the gentlemen well, intimately. I only know that at an early day they laid out Lamasco, and I know that from the fact that I have seen the plat posted up in different places.

Quest. What sort of a place was Evansville in 1843; that is, how much of a place was Evansville when you came here in 1843?

Ans. I don't think I was here in '43. I was here in 1835–'6–'7.

Quest. Well, go on and state what kind of a place Evansville was then.

Ans. I don't know what the population was. I hardly know how to answer that question.

21 Ques. Well, what was the occasion of the advice of the Attorney-General of the United States, and how did it come to be given?

Ans. I understood the——

(Objected to by defendant's counsel, because incompetent and irrelevant.)

Attorney-General was examining the title, pending the purchase of the land for a marine hospital for the United States.

Quest. What family, if any, did William P. Hall leave surviving him, and what were their names?

Ans. Three children—Samuel, Sallie G., and Maria. Samuel died, I don't know what year.

Quest. Under twenty-one? If so, say so.

Ans. I think he was not twenty-one.

Quest. Did he leave a wife or children?

Ans. No, sir; I think he died in his minority; he died at my house.

Quest. Did he leave any wife or children?

Ans. No, sir.

Quest. Did William P. Hall leave a wife?

Ans. Yes, sir.

Quest. What was her name?

Ans. Catharine Hall.

Quest. The complainant in this case?

Ans. Yes, sir.

Quest. What did William P. Hall say about this land in those fifty interviews or more of which you spoke?

(Objected to by defendant's counsel as being incompetent and irrelevant.)

Ans. Well, I gathered from them all that there was a valuable tract of land at the mouth of Pigeon Creek, in Lamasco, in Vanderburgh County, Indiana, which he had inherited from his grandfather, and of which he had been deprived by the unfair action of the parties then in possession.

Quest. Was anybody in possession then?

Ans. All those gentlemen who had laid it out ——

(Objected to by defendant's counsel as incompetent.)

Ans. (Continued.) Well, as far as that was concerned, I don't know that he placed any value on the land, and I never heard the number of acres. I know it was at the mouth of Pigeon Creek, and I know it was in Lamasco.

Quest. I am asking you the question, whether it was in possession, any of it, by Law, or anybody else?

(Objected to by defendant's counsel because leading, incompetent, and irrelevant.)

Ans. Well, particularly after Lockhart's letter, he said he was the owner of it, the real owner, and all he had to do was to take possession of it, that was, that he had a legal right to it.

Quest. What advice did he get from Palmer about it?

(Objected to by defendant's counsel as incompetent and irrelevant, and defendant's counsel here gave notice that they were objecting to all this line of testimony.)

Ans. Palmer came down with him, and he told me that he had gone and notified the persons there that it was William P. Hall's, and that they intended to put a good fence around it; that was, occupy it.

Quest. But what was Palmer's advice to Hall?

Ans. I don't know, only what Palmer told me, and the opinion he gave of Hall's claim. I heard Palmer say when he came home that he had gone on the land with Hall, and had notified the parties there on the land that it was Hall's land, and that he was going to work and take absolute possession of the land with a fence.

Quest. Whose attorney was he acting as at that time?

Ans. William P. Hall's attorney. He told me that there was no question of William P. Hall's full title to the land; that he told me as William P. Hall's attorney. That was Palmer's opinion when he came home.

Quest. State why William P. Hall didn't put a fence around the land then.

(Objected to by defendant's counsel because incompetent and irrelevant.)

Ans. I think Palmer's death stopped that.

(Answer also objected to by defendant's counsel as incompetent.)

Quest. State why Mrs. Catharine Hall hasn't commenced an action sooner than this, or what attempt she has ever made, or ever sought to consult lawyers as to the commencement of an action to quiet the title to this land.

(Objected to by defendant's counsel as incompetent and irrelevant.)

22 Ans. She was without means. I took her and family to my house, and while there she persuaded me to consult lawyers in Evansville about it, which I did, or rather I consulted lawyers. I consulted Mr. Niblack, who in turn employed Mr. Garvin to begin suit in the case.

Quest. What year was this employment?

Ans. I am not able to say; but I suppose that it was about '69 or '70; I am not very certain; I might be a year or two out of the date. That is as I remember it now. They consumed some time in examining the papers.

Ques. State whether or not the complainants or any of them have, since the death of William P. Hall, acquiesced in the title of William H. Law to said undivided two-sevenths part of said land.

(Objected to by defendant's counsel for incompetency.)

Ans. They have not.

Quest. What have they asserted about it?

Ans. They have asserted their belief in their claim to the land, and have shown their determination to prosecute it.

Quest. Has that determination been shown or manifested the whole of the time or only part of the time since his death?

(Objected to by defendant's counsel because leading, incompetent, and irrelevant.)

Ans. The whole of the time.

Cross-examination:

Quest. What was the date of William P. Hall's birth?

Ans. Well, I can state that he married early in 1847, and he wasn't of age until the latter part of that year. I get that from his wife.

Quest. He wasn't twenty-one until winter.

Ans. Until he was married. I think he was twenty-one the following October.

Quest. Do you know the month of his marriage?

Ans. I think it was in May.

Quest. What was the date of his death?

Ans. I don't know the month. It was in 1857, in warm weather.

Quest. Fix the date as near as you can when Hall first spoke to you in regard to the land.

Ans. It was in 1846.

Quest. Fix the date of the Attorney-General's letter.

Ans. I can't do it.

Quest. Fix the date of the trip to Evansville.

Ans. I don't know, only it was a short time before Palmer's death, and Palmer died in 1852.

Quest. Fix the date of the correspondence with Jones.

Ans. That was in '52.

Quest. Fix the date of the conversation with Judge Lockhart in the crowd.

Ans. That is what I can't do.

Quest. Fix the date of the conversation with William P. Hall as to a compromise with Law.

Ans. I could not do it.

Quest. What time did you move from this State?

Ans. 1859.

Quest. Have you never lived here since?

Ans. No, sir.

Quest. When Palmer and William P. Hall spoke of giving notice to the enants, do you know how many there were on the land?

Ans. No, sir.

Quest. Did they not claim the possession of the land in controversy?

Ans. I don't know, sir.

Quest. Didn't you know of William P. Hall's attending the courts at Evansville as an attorney during that time?

Ans. No, sir.

Quest. Didn't you know of his being frequently at Evansville during that time?

Ans. Yes, sir; he visited Evansville frequently.

Quest. How frequently?

Ans. I have known him to be down here frequently.

Quest. Up until the time of his death?

Ans. Yes, sir; I think quite frequently he came down here.

GEORGE B. GRAFF.

23 ANDREW J. WRIGHT, of lawful age, being duly sworn, deposeth as follows:

Quest. State your name, age, occupation and place of business.

Ans. Andrew J. Wright; I live in Princeton, Gibson, Indiana; I am sixty-three years old.

Quest. How long have you lived in Princeton?

Ans. I have lived in the county since '35.

Quest. State whether or not you knew William P. Hall, deceased, in his lifetime.

Ans. I did.

Quest. State what you know, if anything, about his having claimed an undivided two-sevenths part of fractional section twenty-five, at the mouth of Pigeon Creek, in the county of Vanderburgh, and State of Indiana.

(Objected to by defendant's counsel as being incompetent and irrelevant.)

Ans. In a conversation with myself and others (I don't recollect who the others were at this time) he said to me (that was immediately after the trips that he had down here) that he was the owner of a piece of land here in Vanderburgh County, in the city of Evansville, and that he had just returned home from looking after it, and that he had taken or hired a conveyance and rode all over the piece of land and claimed it as his own and gave notice to all that were situated upon it at that time to get out, that he was going to take possession of the land.

Quest. How many times did you hear him mention this land, and what did he say in regard to it?

Ans. That is the only time that I have any recollection of having any conversation with him in regard to it.

Quest. Do you know anything about any advice that he got from lawyers about the land?

Ans. Nothing, except what I heard. Nothing from him. I think that is the only conversation I ever had with him, or him with me, on that subject.

Quest. What were the habits of William P. Hall from the time he was twenty-one until his death?

Ans. His habits were intemperate, very much.

Quest. What do you know, if anything, about his having been prosecuting attorney from Vanderburgh, or Gibson, or other counties?

Ans. If he was ever prosecuting attorney I didn't know it. If he had been prosecuting attorney, it appears to me that I would have known it, for I have been acting as justice of the peace there during that time, and he never prosecuted a case before me as prosecuting attorney.

ANDREW J. WRIGHT.

WILLIAM REAVIS, of lawful age, being first duly sworn, deposeth as follows:

Quest. State your name, age, occupation and place of business.

Ans. William Reavis; my occupation, an attorney; my place of residence, Evansville; my age, I will be sixty on the 27th of this month.

Quest. If you ever resided at Princeton you may state how long.

Ans. I resided at Princeton from 1815 to 1859—Princeton and in the vicinity.

Quest. State whether you were acquainted with William P. Hall, deceased, of Princeton, during his lifetime.

Ans. Yes, sir; I was well acquainted with him.

Quest. State what you know, if anything, about William P. Hall claiming title to the undivided two-sevenths part of fractional section twenty-five, at the mouth of Pigeon Creek, in Vanderburgh County, Indiana.

(Objected to by defendant's counsel as incompetent, leading and irrelevant.)

Ans. I know nothing of William P. Hall ever claiming any particularly described land in Vanderburgh County or Evansville. I did know, however, of his claiming land in what was called Lamasco.

Quest. Well, go on and tell what you know about his claim, or what he said about it.

Ans. I know he claimed land in Lamasco; I have often heard him speak about it; he spoke of it as a possession which he expected to get hold of some day; he talked about it as though it was his at some future day.

Quest. What did he say about any other parties trying to keep him out of it, who they were, and all about it?

(Objected to by defendant's counsel as incompetent and leading.)

Ans. I couldn't tell you what he said in regard to that. I can only tell generally as to his claim of ownership on frequent occasions when in conversation with myself or other parties.

Quest. State whether you know about William P. Hall's habits.

Ans. Yes, sir.

Quest. State what they were.

Ans. Well, his habits in his early boyhood—I knew him from the time he was a baby in his mother's arms until he died—when he was a boy he was sober, but after he went to college he seemed to have become a confirmed inebriate, and drank excessively and continuously from that on until near the time of his death. The locality which I have designated in my deposition as Lamasco is now, and for many years has been, a part of the city of Evansville, and is within the corporate limits of the city of Evansville, county of Vanderburgh and State of Indiana. Lamasco embraces the mouth of Pigeon Creek, in said county.

WILLIAM REAVIS.

24 UNITED STATES OF AMERICA,
*State of Indiana, Vanderburgh County, ss:*

I, A. C. Jones, a notary public within and for said county, and duly authorized by the laws of the United States to take depositions to be used as evidence in the courts of the United States, and duly qualified, commissioned, and sworn as such, do hereby certify that the foregoing witnesses, George B. Graff, Andrew J. Wright, and William Reavis, before testifying, as shown in their respective foregoing depositions, were each by me duly sworn according to law to tell the truth, the whole truth, and nothing but the truth, in the cause wherein Catharine Hall, Sallie G. Brownlee, and Maria H. Hall are complainants, and William H. Law is defendant, pending in the circuit court of the United States for the district of Indiana, at Evansville, in chancery, and that their said depositions were reduced to writing by me and signed by them respectively in my presence, after the same had been carefully read over to them; that the same were taken at the office of Charles E. Marsh, in the city of Evansville, county of Vanderburgh and State of Indiana, on the fourth day of August, A. D. 1875, between the hours of 9 o'clock a. m. and 6 o'clock p. m.; that the adverse party, the defendant, Wm. H. Law, appeared by his solicitors and counsel, the honorable Asa Iglehart and Azro Dyer, esq., at the taking of said depositions, and cross-examined said witnesses.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal this 4th day of August, A. D. 1875.

A. C. JONES,
*Notary Public.*

Depositions of John T. Richten, Willard Carpenter, and Elisha L. Conant, witnesses in a certain action now pending in the circuit court of the United States for the district of Indiana, wherein Catharine Hall et al. are the plaintiffs, and William H. Law is the defendant, taken before me in pursuance of the annexed notice, at the time and place in my certificate hereinafter named, to be used as evidence on the part of the plaintiffs in said action.—C. C. JONES, *Notary public.*

JOHN THEODORE RICHTEN, of lawful age, being first duly sworn, deposeth as follows:

Question. State your name, age, residence, and occupation.

Answer. John Theodore Richten; my place of residence is Evansville, Indiana; my age is fifty-one; I am a saw-miller.

Quest. How long have you resided in the city of Evansville?

Ans. I have resided here, with the exception of one year, from the 4th of January, 1848. That is the time I arrived here.

Quest. How long have you known blocks 157 and 142 in that part of Lamasco lying west of Pigeon Creek?

Ans. I have known them from February, 1848, up to the present time; that is, I have seen them more or less.

Quest. State whether not during the time you have known said blocks they have been in the possession of or occupied by any person.

Ans. No, sir; they have not. I have seen block 157, and I occupied it myself, because I was the foreman of John A. Reitz, and I rolled logs on it ever since 1858, when I commenced there. I rolled logs from it that year for John A. Reitz.

Quest. Did you occupy it as a tenant of William H. Law?

Ans. No, sir. I never heard that there was any tenant on it, and there never was any claim on it that I ever heard of during those years, and never afterwards. They told me they never paid anything on it, and during that time that I was there at the mill I occupied it and I never paid anything on it.

Quest. Did William H. Law or any tenant or agent of his ever have possession of those two blocks for any purpose whatever?

Ans. Not to my knowledge; because there was nothing on them, and they couldn't have possession only to pay the taxes. They might have done that; I don't know (that is, Law paid the taxes, not Reitz), because I didn't inquire into that, and of course I couldn't say.

Quest. When did Schulte first commence to put logs on them, as near as you can recollect?

Ans. It was either in '68 or '69 that he rented it of Law. That Law told me himself—that he had rented it to him. To my knowledge, it was either in '68 or '69.

Quest. How long have those two blocks been vacant, as far as you know?

Ans. Well, they were never occupied with anything except saw-logs, to my knowledge, since '48 up to the present time, with the exception of 142; on that block, there were pavements laid at one time. I could refresh my memory and give you just the date of that, because I know what occurred when that pavement was made, but I don't suppose that is particular.

Quest. In what year was this part of Lamasco west of Pigeon Creek annexed to the city of Evansville?

Ans. Either in '69 or '70, I think; but I couldn't be positive as to that.

(A map was here shown the witness, showing the admission to have been on May 14th, 1870.—REP.)

WITNESS. Yes, I suppose that is about the time.

25 Quest. Were any saw-logs ever put on block 142?

Ans. No, sir; not to my knowledge, because it was too far from the water. I never saw any there anyway.

Cross-examination:

Quest. Don't you know that William H. Law claimed to be the owner of these blocks from the time that you came to the city until the present time?

Ans. That has two points, because I did know it about five or six or seven years ago. I didn't know it until about six or seven years ago; then I heard about it belonging to Mr. William H. Law.

Quest. Now, how do you know but what John A. Reitz paid William H. Law rent for these lots?

Ans. Because he told me he didn't.

Quest. Reitz told you he didn't?

Ans. Yes, sir.

Quest. When did he tell you that?

Ans. It was during the time that I was there, and he told me afterwards—after I left there.

Quest. Who paid for the pavement and improvement on 142, that you speak of?

Ans. I don't know.

Quest. Has not Schulte been paying rent to Law ever since he took charge of block 142, in 1868 or '9, up to the present time?

Ans. I don't know anything about 142.

Qu'st. Well, block 157?

Ans. No, sir; first he leased it for a number of years; I don't know how many years.

Quest. But he has since paid?

Ans. Yes, sir; and bought it about two years ago, I think.

Quest. From William H. Law?

Ans. Yes, sir; it might be that it is not over one year ago that he bought it, because I would hear of trades that he made, and then wouldn't pay any more attention to it.

JOHN T. RECHTEN.

WILLARD CARPENTER, of lawful age, being first duly sworn, deposeth as follows:

Quest. State your name, age, residence, occupation, and how long you have resided there.

Ans. My name is Willard Carpenter; my age is 72; my residence is in the city of Evansville, Indiana, and I have resided here about forty-five years.

Quest. How long have you known blocks 142 and 157, in fractional section twenty-five, in that part of Lamasco lying west of Pigeon Creek, in the county of Vanderburgh, and State of Indiana?

Ans. I have known them since 1844.

Quest. State whether said blocks since that time have been unoccupied and vacant, or whether they have been in the possession of any person.

Ans. They have during that time been unoccupied; no improvements have been made upon them of any character.

Cross-examination:

Quest. Has not block 157 been used by John A. Reitz at one time and by Schulte at another time, for storing saw-logs?

Ans. I think they have. I think I have seen saw-logs on them for several seasons.

Quest. For how many years have you seen saw-logs on them?

Ans. My impression is for twenty years, at certain seasons of the year—not continually there, but floated on and off.

Quest. Don't you know that the party using it paid rent for the block to William H. Law for that purpose?

Ans. I do not. I never heard of it.

Ques. Don't you know of block 142 having been improved with pavements or grading of some sort during the time you speak of?

Ans. I have no recollection of it.

WILLARD CARPENTER.

ELISHA L. CONANT, of lawful age, being first duly sworn, deposeth as follows:

Quest. What is your name, age, occupation and place of residence?

Ans. I am seventy-five next April, seventy-four passed; my name is Elisha L. Conant, and my residence is Evansville, Indiana.

Quest. State how long you have lived in Evansville.

Ans. Since about 1851 or '52; somewhere about that time I came here; I can't say exactly; I have lived here ever since.

Quest. Do you know blocks 157 and 142, on fractional section 25, near the mouth of Pigeon Creek, in that part of Lamasco lying west of Pigeon Creek, and if so, how long have you known them?

26 Ans. I have known them as they are laid off there, and as I understand it to be. The section—I don't know anything about that, but the numbers of the blocks, I recollect that.

Quest. How long have you known them?

Ans. Well, I would say ever since 1852 or '3.

Quest. Have these blocks, during that time, been occupied or unoccupied by any person?

Ans. To say that I know about them being occupied by any person, I couldn't say. I have never seen any person there. I have seen logs on block 157, but who they were put there by or who gave permission to put them there, I don't know anything about that.

Quest. Well, as to block 142?

Ans. I can't recollect so much about that. My impression is it has been vacant ever since I have been here, but I couldn't say positively.

Cross-examination:

Qu'st. Has not Mr. William H. Law claimed to be the owner of these blocks ever since you knew them?

Ans. Well, ever since I knew the blocks; I couldn't answer that question in the affirmative. During that time Mr. Law was out here he took me in his carriage and rode me around out in the country and showed me the property that he owned.

Quest. Didn't he show you these lots?

Ans. He talked about Sweezer's pond—that is some of them.

Quest. Part of block 157?

Ans. I believe it is. He told me he owned that, and I made some inquiry as to what he asked for it. He didn't say. He said nobody wanted to buy. He didn't pretend to think there was any value on them at all.

Quest. Has it not been occupied for saw-logs for the last fifteen or twenty years?

Ans. I am under a strong impression that I have seen logs there ever

since I came here to live, but who put them there or how they came to be there, I don't know—who owns the property, nor I don't know even who owned the logs.

Quest. Haven't you seen improvements made on block 142 during the time you have known it—improvements in the way of grading or pavements?

Ans. I can't recollect anything really about that. I recollect about the logs and this Sweezer's pond, for we spoke about that at the time.

ELISHA L. CONANT.

STATE OF INDIANA,
*Vanderburgh County, ss:*

I, A. C. Jones, a notary public in and for said county, do hereby certify that John T. Rechten, Willard Carpenter, and Elisha L. Conant, the above deponents, were by me first sworn to *to* tell the truth, the whole truth, and nothing but the truth, in the cause now pending in the circuit court of the United States for the district of Indana, wherein Catharine Hall, Sallie G. Brownlee, and Maria H. Hall are the plaintiffs, and William H. Law is the defendant; that the foregoing depositions were all written by me, and that the adverse party was present by his solicitor, Azro Dyer, esq., at the taking of said depositi ns; that all said depositions were taken at the office of Charles E. Marsh, esq., in the city of Evansville, county of Vanderburgh, and State of Indiana, on the 26th day of October, A. D. 1875, between the hours of 9 o'clock a. m. and 6 o'clock p. m., agreeable in all respects to the annexed notice.

In witness whereof I have hereunto subscribed my name and affixed my notarial seal this 26th day of October, A. D. 1875.

A. C. JONES,
*Notary Public.*

27 RESPONDENT'S TESTIMO

Deposition of William H. Law, a witness in a certain action now pending in the circuit court of the United States for the district of Indiana, wherein Catharine Hall, Maria H. Hall and Sallie G. Brownlee are plaintiffs, and William H. Law is the defendant, taken before me in pursuance of the annexed notice and commission, at the time and place in my certificate hereinafter named, to be used as evidence on the part of the defendant in said action.

CATHARINE HALL ET AL.
*vs.*
WILLIAM H. LAW.

WILLIAM H. LAW, of lawful age, being first duly sworn, deposeth as follows:

Question. State your name, age, residence and occupation.

Answer. William H. Law; residence, New Haven, Connecticut; profession, a lawyer; age, seventy-two.

Quest. How long since you became interested in fractional section twenty five (25)?

Ans. Since 1836, forty years next year.

Quest. By whom was the town of Lamasco City platted?

Ans. By Judge James T. McCall, of Terre Haute.

Quest. Before or after you became interested in it?

Ans. After I became interested. The proprietors were one of my

brothers, John Law, Lucius B. Scott, of Terre Haute, Judge James McCall and myself. These constituted the proprietors of the town of Lamasco, as it was called.

Quest. Where did you reside from 1836 to the present time?

Ans. At Norwich.

Quest. Up to what time?

Ans. I moved to New Haven about eight years ago, I think it was. I have my boys in college there, but I removed from Norwich to New Haven.

Quest. Since you became interested in the Lamasco purchase, what portion of your time have you spent in and about Evansville?

Ans. I used to spend every winter here. I used to come about October and remain up to about June, regularly; up to that time I would remain here, and then go east.

Quest. What was done with the Lamasco property after it was platted?

Ans. Judge McCall, he resided here and acted as the general agent; he divided it up and platted it, and had the plat recorded, and acted as the general agent for the sale of the lots that he had platted.

Quest. What was the condition of the land at the time the platting was done?

Ans. At the time of the purchase it was what you would call wild land; in fact when the first purchase was made, all that was purchased, or the most of it at least, was government land, and some of it was entered but a few years before McCall went on and surveyed it; (he was a very good surveyor, by the way); he went on with Mr. , who was then the surveyor, and they run the lines and platted the whole of it; and at the time he surveyed this and laid it off into lots, or a portion it, it was a complete wilderness; he laid off the streets and squares that have continued to this day, and made a very correct map of it; there never has a map been since made that was as correct as that one of Judge McCall's; then as to the name, there was a Mr. Van Antwerp, a friend of Judge McCall's; while they were deliberating as to the name, Van Antwerp says: "I have a name for it"; "Well, what is it?" Said he, "Take two letters of each name, La—, for Law, Ma—, for McCall, and Sco—, for Scott, and," said he, "there you have a good name—that makes Lamasco;" that was the origin of the name.

Quest. Was the land cleared before or after platting?

Ans. While it was platted and afterwards; a portion of it was cleared after it was platted, and a portion before it was platted.

Quest. By whom was that done?

Ans. That was done by McCall for the proprietors; he employed a good many men and spent a great deal of money cleaning and fixing it up; this man Mills cleared some for the timber; he engaged to clear ten or twenty acres—that is, to clear up and burn the brush—and then some of the clearing was paid for; that is the way the clearing was paid for; he paid out a great deal of money laying out the streets, clearing it off and platting it, and, as I remarked, made the most correct map of it I have ever seen.

Quest. You say that he laid out the streets; were the streets marked in any particular way?

Ans. Yes, sir; he run the direct meridian line; Evansville is not, you know; he commenced and laid it out by running the direct meridian line north and south and east and west, and then gave the names to the streets, of First avenue, Second avenue, Third avenue, and
28 so on, and then the cross streets, First, Second, Third, and Fourth, which I think is far better than they are now named;

that was the way it was laid out originally, and then the plat was filed and recorded in the record.

Quest. State whether in the original purchase you were the owner of an undivided interest in that property.

Ans. Each owned an undivided quarter of it.

Quest. State whether subsequently to that time there was any partition of it.

(Objected to by plaintiff's counsel as irrelevant, incompetent, immaterial and not the proper way of proving it.)

Ans. Yes, sir; Judge McCall sold out.

Quest. State whether you did afterwards, or did not claim any portion of this fractional section twenty-five in severalty.

Ans. It was all divided up. There was no distinction made. It was all embraced as one.

Quest. Subsequently to its being divided up, state whether you claimed only a portion or all of it, in severalty.

Ans. Judge McCall became—deranged, I think he was. He was very anxious to sell out, and I did all I could to prevent it. It was a time when everything was depressed, and the land couldn't be sold to advantage. That seemed to prey upon him, and finally he said he would sell it any way, and asked me to find a purchaser for him; and the result of it was that he finally did sell out the whole of his interest, with certain exceptions, which are contained in his deed. He sold his interest—that is, one quarter—to Hugh Stewart, who was a contractor on the canal. (He and his brother built the canal.) He sold it all for a mere song.

Quest. The question is as to whether at some time subsequently to the partition you became, or claimed to be, the owner of portions of fractional section twenty-five in severalty?

(Objected to by plaintiff's counsel because leading, incompetent, irrelevant and not the proper way of proving a partition.)

Ans. Yes, sir.

Quest. State, if you can, without reference to a map, whether lots number three and four, in block number one hundred and thirty-seven, and block number one hundred and forty-two, and the south half of block number one hundred and fourteen, and the south half of block number one hundred and fifty-seven, are above or below the mouth of Pigeon Creek.

(Objected to by plaintiff's counsel because incompetent, irrelevant and no foundation having been laid for such proof.)

Ans. They are below, I think; they are on the west of it—below you may call it, I think. I could tell you exactly if I had my map, but I didn't bring that along with me.

(Objected to by plaintiff's counsel as incompetent and irrelevant.

Quest. Look at the plat found in Exhibit A to defendant's answer, and state whether any of the property described in the last question is contained in lot number two on that plat?

(Objected to by plaintiff's counsel as incompetent, irrelevant and leading.)

Ans. I can't tell positively from that map. If I had my own map here I could answer the question accurately. These maps here are gotten up and corrected and changed with the corrections made in all these others.

Quest. State how long you have claimed the property in controversy in this suit?

Ans. It will be forty years next spring, I think.

Quest. What acts of ownership have you exercised over it during that time?

Ans. Every act of ownership—paying men for clearing and burning brush, paying the taxes from that date to this——

(Objected to by plaintiff's counsel as incompetent and irrelevant.)

——Every act of ownership has been exercised that could be with regard to the ownership of that property. I rather think I have the tax receipts for all that time—a portion of it at any rate. I wish they were now as they were then, for the taxes have increased so.

Quest. State whether any sidewalks have been laid?

Ans. Everything—grading the streets, filling up the holes and ravines, building bridges and passage-ways, and contributions towards bridges. Most all the money that was received was paid out in that way. I don't think I ever received anything during that whole time. The property that was sold by Judge McCall, acting as general agent, and the money that was received was disbursed for labor—clearing, burning brush, filling up ravines, and so on.

Quest. State whether there are any sidewalks around any of those lots now?

Ans. O, yes, sir; it has been under the corporation; you may think so. They made the corporation away out to the extreme end of it, and now there are sidewalks from one end of it to the other. But at
29 that time it wasn't in the corporation. We had to make them at our own expense, what were not ordered. In order to enhance the value of the property, we made them voluntarily. Whether it enhanced the value or not, I couldn't say.

Quest. Of late years, state whether any sidewalk assessments have been imposed and paid.

Ans. Oh, yes; yearly; since it came into the corporation of Evansville—every year.

Quest. About how long has it been in the corporation?

(Objected to by plaintiff's counsel as incompetent and irrelevant.)

Ans. I could tell by going to the clerk's office of the city.

Quest. I don't want exactness.

Ans. Well, a number of years, I would think; as far back as when Hewson was mayor. I wasn't in favor of it, any way.

Quest. State whether since first you claimed the premises in controversy, up to the commencement of this suit, whether any person has ever asserted any adverse claim to these lots.

(Objected to by plaintiff's counsel because irrelevant, incompetent, and leading.)

Ans. I never heard any intimation of any claim until this suit was commenced, and never dreamed of it, nor no one else. Whenever a lot was sold it was customary—with the Germans especially, who compose the largest portion of the purchasers—it was customary for the purchaser to consult some lawyer in regard to the title, and I don't believe there is a lawyer that has been consulted as to the title but what the reply was "perfect." There never was any shadow of title in anybody else, and nobody ever claimed it, or dreamed of such a thing, until this suit was brought.

(Answer also objected to by plaintiff's counsel as incompetent and irrelevant.)

Quest. State whether William P. Hall, in his lifetime, or the complainants in this suit after his death, to your knowledge, ever made any claim to this property before the commencement of this suit.

Ans. I never heard of it, or dreamed of it. Judge Hall, I know his

father who used to be here originally in Evansville. I have met him. He lived here.

Quest. Now, if there is anything else you wish to state, you may state it.

Ans. Well, with reference to the ownership of and possession of that property; as to there being any adverse possession or claim, it never was heard of or thought of until this suit. Judge Hall I used to know intimately; he was the original purchaser, but as to his ever making claim or any pretense or shadow of a claim, he never made it to my knowledge; I used to see him constantly, and during a long and intimate acquaintance with him he never intimated to me that there was any defect in the title to this land.

Cross-examination:

Quest. Do you claim the undivided two-sevenths interest in the land in controversy under the proceedings of the Vanderburg circuit court in which James B. McCall, Lucius H. Scott, John Law, and William H. Law were plaintiffs and William P. Hall was the defendant, a copy of which proceedings is filed with the plaintiff's bill of complaint, marked Exhibit A?

Ans. Judge Hall thought it was the best to apply to the court in order to give him the power to make the conveyance, and to complete and perfect the title that bill was filed.

(Defendant's counsel objected to this inquiry as being irrelevant and incompetent.)

Quest. The question is, do you claim said two sevenths interest under and by virtue of said proceedings, and the deed of Samuel Hall, made in pursuance thereof as shown in said proceedings?

(Objected to by defendant's counsel as irrelevant and incompetent.)

Ans. As I remarked before, Judge Hall, in order to have this conveyance made, made application to the court, but all that is recorded and set out in the bill.

(Answer also objected to by defendant's counsel as irrelevant and incompetent.)

Quest. Perhaps you don't understand the question. I wish to know whether you claim the interest in controversy under the said proceedings or not. In other words, do they constitute your title to this interest?

(Objected to by defendant's counsel as irrelevant and incompetent.)

Ans. I wish to remark, as I said before, that in order to be clothed with powers which he thought desirable, Judge Hall made application to the court for a decree, and under that decree of the court he gave it (I suppose in order to strengthen the title), he made the conveyance. That is on the bill that is filed. It was on the decree of the court, returned to the court and sanctioned by the court.

Quest. Well, now, do you mean the interest in controversy under that conveyance?

Ans. As part of the claim, of course, or we wouldn't have made
30 the application to the court, and the court wouldn't have made the order or decree that is upon the record. I supposed it settled the matter.

Quest. By what other conveyance or title, if any, do you claim the interest in controversy?

(Objected to by defendant's counsel as irrelevant and incompetent.)

Ans. It is claimed under that decree of the court and the deed made in pursuance of the order of the court by Judge Hall.

Quest. Besides this two-sevenths, did you and do you still claim the balance of the interest in the land, to wit, the other five-sevenths?

Ans. I claimed all the interest he had in that decree of the court, all the right, title, and interest; I think that is the way the order was worded. It was returned to the court and sanctioned by the court. If he had any more we claimed that, of course. The decree was particularly explicit—all the right, title, and interest, if any he had. If he had more, of course that was conveyed also.

Quest. I think you don't understand my question. I ask you, if in addtion to the interest which William P. Hall was supposed to have in the land, whether yourself, McCall, Scott, and your brother, John Law, didn't own the remainder of the land, to wit, the other five-sevenths, purchased from other parties? To make this question still more clear to your understanding, I will state that William P. Hall never claimed and never owned any greater interest than the undivided two-sevenths in fee-simple of the land; now, were you not, together with your brother, John Law, Scott, and McCall, the owner of the other five-sevenths of the land at the date of these proceedings, and since then have you not by various deeds of partition succeeded to the entire ownership of said five sevenths of said land?

Ans. We always claimed the whole of section twenty-five without alloy and without question. We claimed it then and we claim it now, without cavil and without doubt.

Quest. Is James B. McCall dead or living?

Ans. Oh, he is dead.

Quest. When did he die?

Ans. I can't give you the date, for I would be very apt to get it wrong, unless I had something to refer to.

Quest. Has he been dead more than twenty years? Did he die before or after 1845?

Ans. I couldn't say.

Quest. Did he die before 1850?

Ans. I couldn't say that either.

Quest. Did he die before '60?

Ans. Oh, yes; before '60. That is a matter that can be easily ascertained.

Quest. Do you remember any other acts of ownership besides clearing the land, laying sidewalks, building bridges over culverts, paying taxes, leveling the streets, digging out stumps, and filling up holes and ravines?

Ans. Yes, sir; improving it generally. Let me speak in reference to the history of the town of Lamasco and selling the lots and blocks. Thousands of dollars were expended for the purpose of making improvements—thousands of dollars. I have no doubt that the money we have expended there up to this time, together with the interest, would amount to a hundred thousand dollars that we paid out of our own pockets, I don't know but more than that, in those improvements.

Quest. State if any other improvements than those you have named were made?

Ans. Yes, sir; those who purchased the lots—and there were a large number of them sold—they improved their own lots and premises. There were a large number of sales, and most of the men who purchased lots built houses and made other improvements on them.

Quest. Was there ever a single building or improvement of any kind made upon those particular lots mentioned in the bill of complaint.

Ans. Yes, sir.

Quest. State who made them, and on what lot they were made, by any purchaser or other person.

Ans. By parties who purchased lots.

Quest. (By defendant's counsel.) State about lots three and four in block number 137?

Ans. Those lots were built upon by Mr. Mills, who owned it, but he couldn't pay for it, and he finally transferred it to a man by the name of Faught.

Quest. State when that was, and whether it has been kept there ever since.

Ans. Yes, sir; they have been kept there ever since. If I had my memorandum I could tell when it was done.

Quest. More than twenty years ago?

Ans. Yes, sir.

Quest. State whether it has been occupied continuously for more than twenty years.

Ans. I would think it has been occupied continuously for more than thirty years.

Cross-examination continued:

WITNESS. My memorandum is here in this book. That lot was taken back from Faught.

Quest. In what year?

Ans. In 1839.

31 Quest. Have any improvements been made upon block 142?

Ans. I should think not. If I had my own map here I could just glance at it and tell who occupies it.

Quest. Have any improvements been made on block 157?

Ans. No, sir; no improvements except a man is putting logs upon it. It has been used for storing logs for thirty years, but if you mean a building, I would say it had no improvements on it.

Quest. Was it ever enclosed by a fence?

Ans. I don't know whether there ever was or not. It was used for logs, but I never put any fence around it. They built a dam right across it to keep the water in for the use of the logs. That was all the improvement, but nobody put a house there.

Quest. The improvements that you have heretofore referred to, then, were made upon other property than block number one hundred and forty-two and block one hundred and fifty-seven, were they not?

Ans. Block one hundred and fifty-seven was rented for logs. If you speak of other improvements, I couldn't say. The streets were run on the meridian line, no matter where it started, but there were no buildings on block one hundred and forty-two.

Quest. Did you ever pay out a dollar in laying off or building the street for block one hundred and forty-two?

Ans. I have told you before I didn't know. There was no distinction as to parts of a street. The account was kept of the improvements generally, not to one block more than another. Just north of 142 there was a house put up which was quite an improvement.

Quest. When was this part of Lamasco west of the creek annexed to the city of Evansville?

Ans. I can't tell without going to the records of the city; it was done when I wasn't here.

Quest. I mean the annexation of that part of Lamasco west of the creek?

Ans. When it was annexed it was all one.

Quest. Wasn't that part of Lamasco lying west of the creek, which embraced the land in controversy, left out in the annexation, and not taken into the city of Evansville until about 1870?

Ans. I don't know as to any division of it. It was taxed long prior to that as Evansville property, I think, but I couldn't speak with certainty unless I consulted the record. I wasn't here at the time, and therefore I can't speak with certainty. I wasn't here for four or five years during the war; but the records will show these facts—the city record. I wasn't aware that there were two distinct takings in. They may have divided it and taken in one part at one time and one at another. I know that they charge taxes on that very block 142, for I received a bill for sidewalks and improvements on that block, which I paid.

Quest. How long ago?

Ans. That I couldn't tell, because I don't remember the year; but I would think much longer than 1870, but that can be seen from the city records.

Quest. Are not blocks 142 and 157 entirely vacant at present, and have they both been vacant for more than twenty years?

Ans. As I said before about blocks 142 and 157, it has been rented for the storage of logs. Whether you call that improvement or not, I couldn't say; but I do know that it has been used for years by those men who occupy it for their logs, up to the present time.

Quest. Has not block 142 been entirely vacant ever since you knew it?

Ans. So far as buildings are concerned, I think there has been no buildings on it. I have always exercised acts of ownership over it, and I am not certain, but my impression is that during the war it was used by the government without leave or license for buildings for troops. I know the block contiguous to it was so used, and buildings put upon it, I don't know for what purpose—hospital purposes I presume. I think it was so used, and the buildings were all sold and taken off afterwards by Carpenter, who bought them. I have paid the taxes and street improvements on them very heavy, and made sidewalks on them where there was no more necessity for it than out in the woods.

Quest. How much money, if any, did you pay Samuel Hall for this undivided two-sevenths interest?

(Objected to by defendant's counsel as irrelevant and incompetent.)

Ans. I don't remember the price—it was done when I wasn't here—but I know it was a high price in proportion to what the other property sold for. I should think it was three times the value of it, by what other property at the same time was purchased for.

Quest. How do you know that any sum whatever was paid Samuel Hall, the father of William P. Hall, for this undivided two sevenths?

Ans. I only know from the fact that it was charged in the rendering of accounts, that Sullivan, who assisted James B. McCall as bookkeeper, charged in as money paid Samuel Hall. I thought it was very heavy then, and I think so now. Of my own knowledge I don't know. But I know it was charged in the accounts when the division was made in '40. In '49 they divided it up among the proprietors, and the money that was claimed to be paid out by McCall was charged a quarter to each one. It was in 1840, I think, when the division was made in severalty.

Quest. Was this man Sullivan the agent of yourself, your brother John Law, James B. McCall and Lucius H. Scott?

32 Ans. I never gave the agency to Sullivan; I didn't like the man. McCall was the agent, and Sullivan assisted him on the books. He bought the foundry, I think, in '38, the present foundry down there. I never liked the man, but Judge McCall was a man of irreproachable character. I left him as the agent, and was perfectly satisfied with him.

Quest. What other evidence have you, if any, that this money was ever paid to Samuel Hall?

Ans. I have no other evidence than the documentary evidence I alluded to. He was charged with a draft that was paid to him at one time—I think it was five hundred dollars, and at another time five hundred dollars more. I have no personal knowledge of it further than documentary evidence, but I have no doubt of it.

Redirect examination:

Quest. In your cross-examination, Mr. Marsh asks you whether you claim title to the property in controversy, under the proceedings which Exhibit A to the complaint is a copy, and you answer in the affirmative. The premises described in Exhibit A are the seventeen acres on the east side of Pigeon Creek, while the property in controversy is on the west side. How can you claim title under those proceedings if it, relate to property on the other side of the creek?

Ans. I don't intend to claim under those proceedings any other than what the proceedings set forth. I have not examined it, but I should claim other than what is set forth in the proceedings of the court, whether it is on the one side or the other. Whatever the court decreed, that I would claim.

Quest. Describe the surface of block 157, and its condition in relation to high water.

Ans. Oh, it is submerged, with a very little portion of it on the west side that I suppose is never covered, and that is frequently not more than enough for the width of a street. The rest of it, I have seen it when it was twenty feet deep or more, I would think.

Quest. State in what manner block 157 has been occupied for the lodging of logs, how long, and under what circumstances.

Ans. Well, when Reitz located his saw-mill there—it was at a very early date; my impression is that as early as 1838 two or three mills were put up there. It was necessary to secure the logs and to bring them in as they were brought down from the river above, and these men have always brought their logs in there and left them to saw up later in the season; and then when the mill of Schultz was put there he had the same privilege, and he now owns it. I would think that there was not a year for the last thirty five years that it has not been so used. Some of the men have paid me rent and some have not. I have always insisted upon them paying—they never paid voluntarily. I rented it to Schultz for the privilege of storing logs, and he now owns it.

Quest. State whether this occupancy has been continuous.

Ans. I don't think it has been interrupted for a single year.

Quest. State whether as your tenant, or voluntarily.

Ans. It has been with my permission. They insisted that it didn't injure it any, but I insisted that they ought at least pay the taxes. Schulte paid me a hundred dollars a year for the use of it, but Reitz didn't want to pay anything. None of them used it without my permission, and Schulte paid me a hundred dollars a year up to the time of his purchase.

Recross-examination:

Quest. You say that you collected rent from Schulte, what other person or persons did you ever collect rent from for the privilege of lodging their logs on them?

Ans. I claimed it of John Reitz, always, and insisted on it that he should pay; but I didn't want any controversy at all, and the response to my claim would always be that it didn't injure it any. Schulte didn't ask it. He said if I would give him the privilege he would pay me a hundred dollars, and he paid it promptly and punctually. I always thought they ought to pay rent for it as much as for a tenement.

Quest. Is not the low part of block 157, which overflows, Sweezer's Pond, and is there not in the center of that pond high ground, which occupies a greater area than the part of the pond which overflows?

Ans. Why, the whole of this is what is called Sweezer's Pond. The pond takes in the whole of it. As to the high ground in Sweezer's Pond, there is no high ground. There is low land in there that in low water you can walk over, but in high water it is all overflowed.

Quest. Does this high part overflow except in very high water?

Ans. I don't know. I know that high water covers Sweezer's Pond, and then there is a high place whenever it is low water you can walk around on all around this little island; and then whenever the water rises above its ordinary height it diminishes its size. But it don't overflow in low water, that's certain. I have seen it when it was dry almost, and then I have seen it when it was all water, and it was around this island and on it that these logs would be floated in. It's covered with ratts of logs now, I will venture to say.

Quest. State whether any of the improvements, for which you say you have spent so much money on this land are still in existence, and if so, upon what lots. Be careful to specify the lots and blocks on which such improvements may be found.

33 Ans. Well, I begin with block 142, and find a street on the north side, on the south, on the east, and on the west. As I remarked, the streets were carried through irrespective of location, and where there was any spare earth it was put on. The improvements are the same now that they were then, with the exceptions of making ditches. McCall's surveys are the surveys now, and they were run by the meridian line clear through. On this very block 142 my impression is I paid $300 for a sidewalk, which I thought foolish and extravagant. And here is this same street there now (pointing to the map) that they are graveling that I will have to pay probably two thousand dollars for.

Quest. Does this last street you mentioned, upon which you expect to pay two thousand dollars, touch any of the land in controversy?

Ans. No, sir; but that is in another section.

Quest. Then, if I understand you, you are not able to state any particular amount in dollars and cents that you have expended in improving any one block in that part of Lamasco lying west of Pigeon Creek?

Ans. No particular lot, for the reason that I have assigned. It was all carried into the general disbursement. I never paid any particular attention to the blocks, but I know the amount was very large that was expended there.

Quest. Did you not own, and do you not own, large tracts in Lamasco outside of this fractional section twenty-five?

Ans. I own other property outside. I wouldn't call them large tracts.

Quest. Is not fractional section twenty-five but a comparatively small area of your landed possessions in Lamasco?

Ans. Fractional section twenty-five is, from its very name, part of a section; the others are full sections.

Quest. Do you not own the other sections adjoining as well as fractional section twenty-five?

Ans. I owned one-quarter of the whole interest of Lamasco, my brother one-quarter, Judge Hall one-quarter, and Scott one-quarter, originally. Since then there have been sales and dispositions of it.

Quest. But was not fractional section twenty-five but a comparatively small portion of your landed possessions in Lamasco?

Ans. No, sir; it wasn't a small part; it was a proportional part.

Quest. Wasn't it a comparatively small portion of the whole of Lamasco?

Ans. No, sir; it composed not one section, but a large part of the section.

Quest. Did fractional section twenty-five comprise one-fourth of the area of Lamasco?

Ans. I should think it did. The land I referred to was outside of Lamasco.

WILLIAM H. LAW.

STATE OF INDIANA,
*Vanderburgh County, ss:*

I, A. C. Jones, a notary public in and for said county, do hereby certify that the above-named deponent was by me first sworn to tell the truth, the whole truth, and nothing but the truth, in the cause now pending in the circuit court of the United States for the district of Indiana, wherein Catharine Hall, Maria H. Hall, and Sallie G. Brownlee are the plaintiffs, and William H. Law is the defendant; that the foregoing deposition was all written by me, and that said deponent subscribed his deposition after the same had been carefully read over to him by me; that the adverse party was present by Chas. E. Marsh, their attorney, at the taking of said deposition; and that all of said deposition was taken at the office of Azro Dyer, esq., attorney at law, in the city of Evansville, county of Vanderburgh, and State of Indiana, on the 1st day of October, A. D. 1875, between the hours of 8 o'clock a. m. and 6 o'clock p. m., agreeable in all respects to the annexed notice.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 2nd day of October, A. D. 1875.

A. C. JONES,
*Notary Public.*

B.

*Authenticated copy of the division of frac. sec. 25, town. 6 south, of range 11 west, as made by commissioners and accepted at the March term of the circuit court of Vanderburgh County, 1833.*

Vanderburgh circuit court, March term, A. D. 1833.

STATE OF INDIANA,
*Vanderburgh County, sct:*

Pleas at the court-house, in the town of Evansville, in the county of Vanderburgh, and State of Indiana, on the 12th day of March, in the year of our Lord one thousand eight hundred and thirty-three, before William Olmstead and John M. Dunham, associate judges of the Vanderburgh circuit court.

Be it remembered that heretofore, to wit, on the 12th day of September, in the year of our Lord one thousand eight hundred and thirty-two, at a circuit court holden at the court-house aforesaid, in the town, county, and State aforesaid, before the judges aforesaid, it being
34 here proved to the satisfaction of the court that Daniel Miller hath given due and legal notice that he would, on the third day of this term of this court, make application for the appointment of commissioners to divide amongst the several proprietors thereof fractional section number 26, in township number 6 south, of range number 11 west, in the district of land offered for sale at Vincennes.

Now, therefore, on his motion it is ordered that Robert M. Evans, Alanson Warner, and Horace Dunham be and they are hereby appointed commissioners to divide said fractional section according to law between the several proprietors thereof, and that they make report to this court at the next term of this court.

And now here the commissioners heretofore appointed to make partition herein, make the following report, to wit:

Plat of a survey of fractional section number twenty-five, in township number six south, of range number eleven west.

Diagram. (See ninth page.)

Beginning at a stake, the northeast corner of said section, running thence south 6 degrees 30 minutes, east 21 chain to a stake on the bank of the Ohio River, thence down the river, meandering the same, north 79 degrees 30 minutes, west 5 chain to a stake, thence north 76 degrees, west 13 chain 50 links to a stake; thence south 74 degrees 30 minutes, west 5 chain 50 links to a stake; thence (crossing the mouth of Pigeon Creek) north 83, west 4 chain 50 links to a stake; thence south 73 degrees, west 21 chain 50 links to a stake; thence south 65 degrees 30 minutes, west 14 chain 50 links to a stake; thence south 51 degrees 30 minutes, west 5 chain 50 links to a stake; thence south 44 degrees 45 minutes, west 8 chain to a stake; thence south 39 degrees 80 minutes, west 7 chain 75 links to a stake at the southwest corner of said section; thence north 6 degrees 30 minutes, west 30 chain 39 links to a stake, the northwest corner of said section; thence to the beginning, containing one hundred and fifty-one acres.

March 7, 1823.

CHESTER ELLIOTT,
*D. S. V. C.*

The honorable the judges of the circuit court of Vanderburgh County:

The undersigned, commissioners appointed by your honorable body to divide fractional section number 25, in township number six south, of range number 11 west, in Vincennes district, report that they have discharged that duty. They employed Chester Elliott, esq., who proceeded to lay out said section agreeably to the outer boundaries as delineated on the foregoing plat, by which said section was found to contain 150 acres. Your commissioners thence proceeded to divide the same among the several claimants as follows, to wit:

Lot number one (1), beginning at the northeast corner of said section, running thence west (at a variation of 6 degrees 30 minutes) 9 chain 2 links to a stake; thence south at the same variation, 17 chain 4 links to a stake on the bank of the Ohio River; thence up the same to a stake, the southwest corner of said section; thence north (same variation) 21

chain to the beginning; containing seventeen acres, being one-seventh part in point of value, of said section, which said lot your commissioners assign to the heirs of Charles Smith, late of Knox County, deceased.

Lot number two (2) begins at the northwest corner of lot number one (1) and runs west to the middle of Pigeon Creek 8 chain 50 links; thence down the center of said creek to the Ohio River; thence up said river, with the meanders thereof, to the southwest corner of lot number one (1); thence 17 chain 4 links to the beginning, estimated in point of value at two-sevenths of said section, and containing seventeen acres, which your commissioners assign to William P. Hall, of Gibson County.

Lot number three (3) begins at the center of Pigeon Creek, at the northwest corner of lot number two (2), running thence west 20 chain 30 links to a stake at the half-mile corner of said section; thence south 17 chains to the Ohio River; thence up said river, with the meanders thereof, to the center of Pigeon Creek; thence up said creek along the center thereof to the beginning, containing twenty-seven acres, estimated in point of value worth two-sevenths of said section, and which your commissioners assign to Daniel Miller, esq.

Lot number four (4) begins at the northwest corner of said lot number three (3), running thence west 21 chain 35 links to a stake; thence south 21 chain 45 links to the Ohio River; thence up the same, with the meanders thereof, to the southeast corner of lot number three (3); thence north 17 chain to the beginning, containing forty acres, estimated in point of value as one-seventh part of said section, and which your comm isioners assign to the heirs of William Jones, late of Knox County, deceased.

Lot number five (5) begins at the northwest corner of lot number four (4); running thence west 18 chain 35 links to a stake, the northwest corner of said section; running thence south (same variation) 35 poles 46 links to the southwest corner of said section, on the bank of the
35 Ohio River; thence up the same, with the meanders thereof, to the southwest corner of lot number four (4), thence north 21 chain 45 links to the beginning, fifty acres, estimated in point of value at one-seventh part of said fraction, and which your commissioners assign to the heirs of John Johnson, late of Knox County, deceased, as reference in each case to the foregoing plat will more fully shew. All of which is respectfully submitted.

March 8, 1863.

R. M. EVANS,
A. WARNER,
H. DUNHAM,
*Commissioners.*

STATE OF INDIANA,
*Vanderburgh County, ss:*

Before me, the undersigned, a justice of the peace in and for the county and State aforesaid, personally appeared Robert M. Evans, Alanson Warner, and Horace Dunham, commissioners appointed by the circuit court of the county aforesaid, to divide fractional section number 25, in township number 6 south, of range number 11 west, in the Vincennes land district, amongst the several claimants thereof, and made oath that they would honestly and faithfully execute the trust reposed in them as commissioners as aforesaid.

Given under my hand and seal this 12th day of March, 1833.

[SEAL.] N. ROWLEY, *J. P.*

STATE OF INDIANA,
*Vanderburgh County, ss:*

Before me, the undersigned, one of the associate judges of the circuit court of Vanderburgh County, in the State aforesaid, personally appeared the above named Robert M. Evans, Alanson Warner, and Horace Dunham, commissioners as aforesaid, and acknowledged the foregoing plat, partition and report hereto attached, to be their voluntary act for the purposes herein specified.

Given under my hand and seal this 12th day of March, 1833.

[SEAL.] WM. OLMSTEAD,
*A. J. V. C.*

Which report of the commissioners aforesaid is by the court now here confirmed. And it is considered by the court here that the parties to the petition aforesaid pay the expenses of the partition as follows, to wit:

The commissioners' fees, viz:

| | |
|---|---|
| R. M. Evans, 4 days as commissioner | $4 00 |
| " " 1 day making plat and returning | 1 00 |
| Total | $5 00 |
| Horace Dunham, 2 days as commissioner | $2 00 |
| Alanson Warner, 2 days as commissioner | 2 00 |
| Total | $9 00 |

The owners of each tract in said plat mentioned one-fifth, and that the owners of each tract in said plat mentioned pay their proportion of the expense of surveying said tract, as follows, viz:

| | |
|---|---|
| Charles Smith's heirs | $4 24 |
| Wm. Jones' heirs | 4 24 |
| John Johnson's heirs | 4 24 |
| Daniel Miller | 4 88 |
| William P. Hall (paid by R. M. Evans) | 4 00 |

STATE OF INDIANA,
*Vanderburgh County, ss:*

I, C. D. Bourne, clerk of the Vanderburgh circuit court, do certify that the above is a true, full and complete transcript of the proceedings in the above cause, as the same appears of record in my office.

Witness my hand and the seal of said court, at Evansville, this 16th day of March, A. D. 1836.

[SEAL.] C. D. BOURNE, *Clerk.*

36 And afterwards, to wit, on Wednesday, the 25th day of July, A. D. 1877, the following further proceedings in said cause were had, to wit:

Now at this day came the appellants and tendered their bond for an appeal in this case, in the penalty of five hundred dollars, with Charles Brownlee as surety, and said bond is approved and ordered to be fied in the cause. And said bond is in the words following:

Supreme Court of the United States.

CATHARINE HALL, MARIA H. HALL, AND Sallie G. Brownlee, appellants,
*vs.*
WILLIAM H. LAW, APPELLEE. } Chancery.

Know all men by these presents, that we, the said appellants, and Charles Brownlee, are held and firmly bound unto the above named appellee, in the sum of five hundred dollars, to be paid to the said appellee, to which payment well and truly to be made, we bind ourselves jointly and severally, and our and each of our heirs, executors, and administrators, jointly by these presents. Sealed with our seals, and dated this 25th day of July, A. D. 1877.

Whereas the above named appellants have prosecuted their appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Indiana:

Now, therefore, the condition of this obligation is, that if the above-named appellants shall prosecute their said appeal to effect, and answer all costs that may be adju'ged or awarded against them if they shall fail to make good their plea, then this obligation to be void; otherwise in full force.

CATHARINE HALL. [SEAL.]
MARIA H. HALL. [SEAL.]
SALLIE G. BROWNLEE. [SEAL.]
CHARLES BROWNLEE. [SEAL.]

Sealed and delivered in presence of—

Taken and approved by me this 25th day of July, 1877.

J. D. HOWLAND, *Clerk.*

37 DISTRICT OF INDIANA,
*At Evansville, ss:*

I, John D. Howland, clerk of the circuit court of the United States for the district of Indiana aforesaid, do hereby certify that I have carefully compared the foregoing printed papers hereto annexed with the original papers and entries and testimony on file in said court, in the cause of Catharine Hall, Maria H. Hall, and Sallie G. Brownlee versus William H. Law, and that the same are true and correct copies of the original papers and records therein set forth, and of the whole thereof, as the same now remains in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at my office in the city of Evansville, in the district aforesaid, this 26 day of September, A. D. 1877.

[SEAL.] J. D. HOWLAND, *Clerk.*

(Indorsement on cover:) No. 376. Catharine Hall, Maria H. Hall, and Sallie G. Brownlee, appellants, vs. William H. Law. Indiana C. C. U. S. Filed 28th December, 1877.

FILED
MAR 25 1880
D. W. MIDDLETON Clerk.

# COMPLAINANTS' BRIEF.

## HALL ET AL

VS.

## LAW.

—IN THE—

## Supreme Court of the United States.

BY CHAS. E. MARSH.

INDIANAPOLIS:
DOUGLASS & CARLON, PRINTERS.
1880.

# In the Supreme Court

OF THE

# UNITED STATES.

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CATHERINE HALL, MARIA G. HALL *et al.*

*vs.*

WILLIAM H. LAW.

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## *COMPLAINANT'S BRIEF.*

The record in this case is somewhat voluminous, and has been by the defendant badly encumbered. A bill below was brought by the complainants to quiet the title to certain real estate, named therein, and the defendant's title, which consists only of a judgment or decree rendered in the year 1836, by the Vanderburgh Circuit Court, was the only title by which he held. See pages 5 to 9, inclusive, of the record.

William H. Law, the defendant, himself admits that he has no other title. See page 42, cross-examination of William H. Law, to the bottom of said page.

The bill of complaint is short, and commences on page 3 and ends on page 4 of the record. The proceedings of the Vanderburgh Circuit Court, commencing in the year 1836, under which the defendant claims title, commence upon page 5 and end upon page 9, as before stated.

At the September term, 1836, of the Vanderburgh Circuit Court there was filed a bill by the defendant and others (from which others the defendant has obtained their title and interest by quit claim deeds), against William P. Hall, then a minor of about nine years of age, to obtain his title to the land. Upon this bill appeared this endorsement:

"I, Samuel Hall, guardian *ad litem* for William P. Hall, do hereby acknowledge service of subpœna in the within bill, June 10, 1836. S. HALL."

This service was thus acknowledged upon the bill before it was filed. At the September term next following (without any time having intervened, as the defendant alleges) a decree in said cause was made, by which the property in controversy was declared to belong to the complainants, and Samuel Hall was appointed a commissioner to make a deed conveying to the complainants all interest of the said William P. Hall to the land in controversy, which was afterwards, in 1838, in pursuance thereof, done. This decree may be found upon pages 7 and 8 of the record.

No other service upon the infant was had. The law at that time required the Clerk to keep a full and complete

record of all such causes, and it must be presumed that in this case he did his duty. See Acts of 1838, p. 135.

The whole case rests upon the validity of this record. This is not one of those cases in which any presumptions can lie in favor of the record, for it shows exactly how the infant was brought into court. A personal service at that time was necessary, as well as now. The common law at that time prevailed in Indiana, and to suppose that any other service different from that named in the record was had, would be to simply contradict the record. Upon this point the Supreme Courts of the United States, California and Illinois have laid down the rule in the most emphatic language. *Galpin* v. *Page*, 18 Wal. 350; *Clark* v. *Thompson*, 47 Illinois, 25; *Hahn* v. *Kelley*, 34 Cal. 391.

Says Freeman, in his work upon Judgments:

"The presumption in favor of proceedings of courts of record are indulged only in relation to those jurisdictional matters concerning which the judgment roll is silent. But no presumptions in support of the judgment are to be allowed in opposition to any statement contained in the record. If an act be stated in the roll as having been done in a specified manner, no presumption arises that, at some future time, the act was done in a better or more sufficient manner. If it appears that the process was served in a particular mode, no other and different service can be presumed. To indulge such a presumption would be to contradict the record, which imports absolute verity. When, therefore, the record shows that certain steps were taken to procure jurisdiction, and the law does not consider those steps sufficient, the judgment will be regarded as void for want of jurisdiction over the defendant."

case. The record in such a case does not blow hot and cold, as might be supposed; on the contrary, both acts may have been done. On presentation of the return of service upon the son the court may have declared it no service, and service upon father may have been subsequently made, and the wrong return may have found its way into the judgment roll. To hold thus would be consistent with the record, while to hold otherwise would be to contradict the judgment.

"So in the case of a service by publication—if the affidavit of the printer states that the summons was published one month, and yet the court in its judgment states that it was published three, or that service has been had upon the defendant, it will be presumed that other proof than that contained in the judgment roll was made, for not to so presume would be to deny to the record that absolute verity which must be accorded to it. Thus limited or understood, the point made by counsel for appellant is doubtless well made.

"Still less tenable, however, is the point made by the respondents, to the effect that where it appears that service was obtained by publication, nothing will be presumed in favor of the jurisdiction of the court, but the party relying upon the judgment must show affirmatively that the court had jurisdiction, or, in other words, that he must show an affidavit and order for publication, and an affidavit of publication, in all respects responsive to the calls of the statute. In holding that the affidavit and order for publication constitute no part of the judgment roll, we have already practically denied this doctrine so far as they are concerned. But there are broader grounds or more fundamental reasons against it, which would be equally conclusive of the whole question were the affidavit or order for publication a part of the judgment."

And in the case of *Clark* v. *Thompson*, 47 Ill. 25, the court says:

"This was an action of ejectment, brought by Sarah Jane Clark, against Miles Thompson, in the Randolph Circuit Court. On the trial in the court below, the jury found a verdict in favor of the defendant, for which a judgment was rendered in his favor. To reverse that judgment, an appeal is prosecuted to this court, and various errors have been assigned in the record.

"It is first insisted that the circuit court rendering the order licensing the administrator to sell the land in controversy to pay the debts of Cuthbert S. Crane, deceased, did not have jurisdiction of the persons of the heirs. It appears that a summons issued on the 23d day of April, 1849, to the widow and heirs, requiring them to appear on the fourth Monday of the same month, to answer the petition. On the same day McConnell and wife acknowledged service, and he also acknowledged service for the minor heirs of Crane, as their guardian. The record discloses no other notice or service, nor does the decree find that a different service was had. A guardian *ad litem* was appointed, and answered on the next day after the summons was issued, stating that he knows of no reason why enough of the land should not be sold to pay the debts. The decree finds that, as the defendants urge nothing against the sale, and, as the guardian *ad litem* admitted debts existed, the lands should be sold for their payment.

"The statute has provided but two modes by which the court can acquire jurisdiction of the person of the heirs in this proceeding: One is by the publication of a notice for the prescribed period, and the other by serving a notice with a copy of the petition and account of administration, upon the heirs thirty days before filing the petition. In this case neither of these modes appear to have been adop-

ted. In Herdman v. Short, 18 Ill. 59, and Johnson v. Johnson, 30 Ill. 215, it was held that a summons with service was sufficient to confer jurisdiction in this proceeding. In this case, as to the minors, there is no pretense of service, nor had the guardian power to admit service for them."

"It is, however, insisted that when a court of general jurisdiction has proceeded to adjudicate a cause, we must presume that the court had evidence that there was such service or appearance as confers jurisdiction of the person; that the question of jurisdiction is primary, and must first be determined. This is no doubt true in all collateral proceedings, but is liable to be rebutted. If the record shows service which is insufficient, and the record fails to show that the court found that it had jurisdiction, then the presumption is rebutted, and it must be held that the court acted upon the insufficient service. When a summons and return appear in the record, and there is no finding of the court from which it may be inferred that there was other service or appearance, it will be presumed that the court acted upon the service which appears in the record. In this case the summons and acknowledgment of service were not sufficient to confer jurisdiction over the minor decree—as to them was a nullity, and may be attacked in a collateral proceeding."

In the case of *Galpin* v. *Page*, 18 Wal. 350, the Supreme Court decides:

"The presumptions which the law implies in support of the judgments of superior courts of general jurisdiction only arise with respect of jurisdictional facts concerning which the record is silent. When the record states the evidence or makes an averment with reference to a jurisdictional fact, it will not be presumed that there were other

or different evidence respecting the fact, or that the fact was otherwise than averred."

And yet the defendant asks your Honors to overrule your own decision and that of these two courts to give them this property, and they do it upon a dictum found in 1 Greenleaf, sec. 19, which reads as follows:

"The presumption will also be made, after twenty years, in favor of every judicial tribunal acting within its jurisdiction, that all persons concerned have due notice of its proceedings."

But it will be noticed that it is not there stated that jurisdiction will be presumed when the record states to the contrary. In the case at bar the record shows affirmatively that the defendant was not in court, and this is the distinction. This doctrine in Greenleaf does not and can not refer to any such case. The case there referred to, cited to support that dictum, is *Brown* v. *Wood*, 17 Mass. 68, which was a case not in point. It was not a case in which the record showed anything in relation to jurisdiction. But the court merely spoke of presumptions which, after a lapse of time not named, would be extended to judicial records. There was no question whatever like the one now before this court.

The opposite gentleman does not rely upon this dictum alone, but upon the case of *Horner* v. *Doe*, 1 Ind. 130. The court in that case says:

"The judgment of a court in a suit requiring ordinary adversary proceedings, which appears on its face, or may be shown by evidence (in a case where it may be shown by evidence) to have been rendered without jurisdiction hav-

ing been acquired by notice, of the presence of the defendant, or without jurisdiction of the subject matter, is void and may be so treated when it comes in question collaterally."

Also that "when the record discloses nothing in the point, jurisdiction of the person and of the subject matter will be presumed in cases of domestic judgments of courts of general jurisdiction, when they come collaterally in question."

And it also said, "it should be borne in mind in this case that the record in question contains no recital of subject notice to the infants, and shows neither that it was or was not given. The facts stated in it are not such as to preclude the possibility of notice having been given. The infants might have been in court in person at the time of the appointment of the guardian *ad litem;* if they were, that was sufficient notice; and had the record simply recited that 'on motion, without specifying on whose motion, a guardian *ad litem* was appointed, we have already decided we would presume they were personally in court. *Thompson* v. *Hart*, 8 Blackf. 336. If they were not in court at the appointment of the guardian *ad litem*, still, as the cause was continued to a subsequent term, notice may, in the mean time, have been given to the infant as well as to the adult defendants. It appears that the guardian accepted the appointment and discharged his duty.'" *Hough* v. *Canby*, 8 Blackf. 301.

I have copied above all of the case upon which the defendant relies. It is distinctly stated that the record is a silent one upon the subject of notice. However, there was

in that case an appointment of a guardian *ad litem*, and the court presumed, the record being silent upon the subject of notice, that, as the case was continued until the subsequent term, notice might have been given. The case, as I understand it, means simply this, that where a record shows the appointment of a guardian *ad litem*, such statement shall not be taken to contradict the fact of notice upon the infants. But this case has been since substantially overruled by the same court which rendered it. See *Ashley* v. *Laird*, 14 Ind. 222; also, *Hawkins* v. *Hawkins*, 28 Ind. 66.

On the above dictum from Greenleaf, however, and not on the case of *Horner* v. *Doe*, the court below decided against us. But even the Indiana case can not apply, for the infant in fact, as shown by the record, was of too young and tender an age to have consented to anything, being then only nine years of age.

The complainants establish their title to the land first by patent, James Madison to Peter Jones, pages 17 and 18 of record; Peter Jones to Nathaniel Ewing, p. 18; Nathaniel Ewing to William Prince, p. 19; Administrators of William Prince to William Daniel, pp. 20 and 21; William Daniel and wife to William P. Hall, pp. 22 and 23. The proceedings of the administrators of William Prince, under which they sold the property of William Prince, deceased, pp. 24 to 27.

Thus was the title in William P. Hall made complete in the year 1831. Five years afterwards were commenced the proceedings by which his title was attempted to be divested, but which, as we have seen, was without notice to the in-

fant, and the preceedings were consequently void. But supposing that the infant had been served with process, the judgment would nevertheless be void for fraud. The bill states that the conveyance was made from Ewing to Prince upon a consideration that has entirely failed, and therefore the deed from the administrators of Prince to William P. Hall was void, pp. 5 and 6. But the defendant testifies that he paid a large sum of money for the property—about three times what it was worth, p. 45, near bottom. According to the testimony of the defendant the allegations in that bill were false, and money was paid to obtain the infant's title.

The testimony given in the case need not at present be noted. There is none tending to disturb the complainant's title. Their title rests upon the construction which this court may give to the decree rendered by the Vanderburgh Circuit Court in the year 1836.

CHARLES E. MARSH,

*Attorney for Appellants.*

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# SUPREME COURT OF THE UNITED STATES.

CATHERINE HALL AND OTHERS,
APPELLANTS,
*versus*
WILLIAM H. LAW, APPELLEE,
} No. 114.

## BRIEF FOR APPELLANTS—IN REPLY.

JAMES C. DENNY, Counsel for Appellants.

# SUPREME COURT OF THE UNITED STATES.

CATHERINE HALL AND OTHERS,
APPELLANTS,
*versus*
WILLIAM H. LAW, APPELLEE.

No. 114.

## BRIEF FOR APPELLANTS—IN REPLY.

### STATEMENT OF THE CASE.

This is an appeal from the order and judgment of the Circuit Court for the District of Indiana, dismissing the bill of complaint filed by the appellants against the appellee. R., p. 1.

An action was originally brought in the Circuit Court of Vanderburgh county, Indiana, to quiet the title to the property in controversy in this cause. The cause was transferred to the Circuit Court on the application of the appellee. R., p. 3.

The bill avers that complainants are the owners in fee simple, as tenants in common of two-sevenths of the property described in the bill, to-wit, lots Nos. 3 and 4 in block No. 137, and block No. 142, the south half of block No. 114, and the south half of block No. 157, in that part of the city of Evansville known as Lamasco—all of the value of $35,000, being laid out and platted on fractional section twenty-five, in town six, south of range eleven west, in the district of land offered for sale at Vincennes. That they are seized of the same by a good and indefeasible title by descent from one William P. Hall, who departed this life intestate in the year 1857; that said Hall died seized in fee of said two-sevenths.

That defendant pretends and claims to be the owner of the fee of said lands, under and by virtue of certain proceedings in chancery, had by the Vanderburgh Circuit Court, and offers to sell said land to divers persons, and pretends that he can pass a good and perfect title thereto, and that he holds the title thereto of these complainants, greatly to their injury—insomuch that they can not, by reason of such pretense and claim, sell their interest in said land for its true value. A copy of the record in the Vanderburgh Circuit Court is filed with the bill.

That at the time of the commencement of said proceedings, the said William P. Hall was an infant under the age of ten years, and was never served with process or writ of subpœna in said cause in chancery in the said Vanderburgh Circuit Court. R. pp. 5, 6, 7, 8 and 9.

No evidence in support of this bill was taken—none heard by the court; the bill on its face was insufficient; the facts stated did not authorize the court to render the decree that was rendered. There is indorsed on this bill the following: "I, Samuel Hall, guardian *ad litem* for William P. Hall, do hereby acknowledge service of subpœna in the within bill. "S. HALL.

"June 10, 1836."

Court began, as the record shows, on the fourth Monday in September, 1836. The bill was filed the first day of the term.

Samuel Hall was on that day appointed a commissioner to make a deed conveying the interest of William P. Hall in the land to the complainants in that bill. Three days thereafter, to-wit, on the 30th day of September, his report shows that he "made, executed and delivered" the deed. He did not acknowledge the deed until the 24th of September, 1838. Four continuances were had, but this was after the decree was rendered, and the deed made, executed and delivered. R., pp. 9, 10, 11, 12, 13, 14 and 15.

Appellee answers. He denies the interest claimed by the complainants. He admits that complainants are related to William P. Hall as alleged, that they are his heirs at law, but denies that William P. Hall died seized in fee simple, or otherwise, of said lands, etc.

Defendant further says that he claims to be the owner in fee simple of said lots, *but he denies that he claims said fee of said lots and blocks under and by virtue of the proceedings in said suit in chancery, mentioned in said bill of complaint* and the record, of which *a copy is set out as an exhibit to said bill of complaint; on the contrary thereof the defendant holds all of said lots and blocks and parts of the blocks by a good and indefeasible title to the whole thereof, derived through mesne conveyances from the government of the United States.*

That he and those under whom he claims have sold lots, built side walks, made improvements, and have *continually* and notoriously *claimed* exclusive ownership of the same, and especially in exclusion of said complainants, said William P. Hall and all others under whom said complainants claim for more than thirty years. He says, "While the seventeen acres of ground mentioned in said proceedings lay east of Pigeon creek, all the property mentioned in the bill of complaint herein lies west of said Pigeon creek." The bill in chancery does not even refer to any subdivision of this property.

That William P. Hall, prior to March 1, 1833, did pretend to be the owner, but that by certain proceedings in partition in the Vanderburgh Probate Court, wherein said Hall was one of the defendants, a decree was rendered whereby said Hall's pretended share of said section was set off to him in severalty, to-wit: Seventeen acres on the east side of said Pigeon creek. A copy of the said proceedings from the complete record is filed.

That from 1834 the ownership and possession of said property followed said partition, and thenceforth neither William P. Hall nor the complainants ever had ownership, possession or dominion over the property mentioned in said bill of complaint. That the claim is stale, and he insists on the statute of limitations.

That complainants are out of possession, and that their pretended title is a legal and not an equitable title.

Then follows the partition proceedings referred to in the answer.

In the report of the Commissioners is the first time the names of the parties appear. Hall's name does not appear in the record, except in the report of the Commissioners. The cost taxed to William P. Hall was paid by R. M. Evans. The copy of the record was made out and certified March 16, 1836, *three years and four days* after the record was made.

Reply was filed to the answer. *Appellants'* evidence—R., p. 17 to 38.

Patent from United States for the land in question to Peter Jones.

Deed from Peter Jones and wife to Nathaniel Ewing for two-sevenths of the fractional section.

Deed from Nathaniel Ewing to William Prince for two-sevenths of same land.

The administrators of William Prince to William Daniel for the same two-sevenths.

Deed from William Daniel and wife to William P. Hall for said two-sevenths.

Then follows the proceedings in the Gibson Circuit Court authorizing the administrators to sell; the sale, etc.

## DEPOSITIONS.

*George B. Graff* proves the heirship of appellants; that William P. Hall was a common drinker, generally intoxicated, not fit to attend to business, and did not attend to business; lived on property given to him by his father. Hall was married in 1847; he died in 1857; his children were then very young.

*William Reavis*, (R., pp. 33 and 34).

Know Hall claimed land in Lamasco. After he returned from college he seemed to have become a confirmed inebriate, and drank excessively and continuously from that until near the time of his death.

*John Theodore Rechten*, (R., p. 35).

Lived in Evansville since 1848, except one year; know blocks 157 and 142 in that part of Lamasco lying west of Pigeon Creek; have known them since 1848 to present time; have not been in possession of or occupied by any person; I used it as agent for John A. Reitz; rolled logs on it ever since 1858; did not occupy it as tenant; they told me they never paid anything on it; I occupied it, and never paid anything; William H. Law never had possession, to my knowledge; there was nothing

on them; might have paid taxes; Reitz rented it from Law in 1868 or 1869; these blocks were never occupied with anything except sawlogs, to my knowledge, since 1848, except 142; on that block there was a pavement laid at one time; that th t part of Lamasco was annexed to the city of Evansville in 1869 or 1870; no logs on 142; learned that Law claimed this property six or seven years ago. In cross-examination, witness says that Reitz told him he did not pay any rent for the property.

*Willard Carpenter,* (R., p. 36).

Have resided in Evansville forty-five years; am seventy-two years old; have known the property in controversy since 1844; have been (that is blocks 142 and 157) unoccupied; no improvements have been made upon them of any character; saw-logs have been on block 157; not continuously; have no recollection of pavement or grading being made in front of 142.

*Elisha L. Conant.*

Lived in Evansville since 1851 or 1852; have known the blocks since 1852 or 1853; do not know that they have been occupied; my impression is that block 142 has been vacant all the time since I have known it. Speaks about saw-logs.

*William H. Law,* (R., pp. 39 to 48).

Became interested in the property in 1836; town of Lamasco laid out after I became interested in it; at time of purchase it was wild land; it was laid out in lots, blocks and streets; land was cleared while it was platted and afterwards; this was done by McCall, one of the owners; the streets were marked; each owned an undivided quarter, to-wit., McCall, John Law, William H. Law and Lucius B. Scott; became a part owner of this tract subsequent to partition of this fraction; it will be forty years next spring since I claimed this land. *As to acts of ownership,* he says: *Every act of ownership, paying men for clearing and burning brush, paying the tax from that date to this*—every act of ownership has been exercized that could be with regard to that property—grading the streets, filling up the holes and ravines, building bridges and passage-ways, and contributions toward bridges; street assessments have been made since it came into the corporation of Evansville; never heard of any adverse claims from Hall or any other person. At page 42, in the cross-examination, several questions were asked directing the attention of the witness to the question whether he claimed the land under the chancery proceedings, and several evasive answers are given. He finally says, "It is claimed under the decree of the court." In his answer to the bill he says he does not claim under this chancery proceeding. See Record, p. 11.

No improvements made on blocks 142 and 157. *As to amount paid to Samuel Hall for interest of William P. Hall, a large amount, he says; does not remember the amount; it was a large sum—more than it was worth.* R., p. 45.

I don't intend to claim under these proceedings any other than what the proceedings set forth; I have not examined it, but I should not

claim other than what is set forth in the proceedings of the court. R., p. 46.

ASSIGNMENT OF ERROR.

We claim that the court erred in holding and deciding that the equity was with the appellees.

That the court erred in dismiss ng the appellan s' bill of complaint.

ARGUMENT.

We respectfully present a reply *seriatim* to the several points urged by counsel for appellee.

I. Are we properly before the court in this chancery proceeding, or is our remedy at law?

II. Are we affected by the statute of limitations?

III. Is the acknowledgment of service by Samuel Hall, in the chancery proceedings of 1836, a part of the record in that cause?

IV. Was the partition proceeding of 1833 a valid one, and can its validity be questioned herein collaterally?

Upon each point indicated we claim the conclusions of opposite counsel to be erroneous.

I. As we understand his proposition, as to our right to prosecute an action to quiet title in the Federal Court, it is this: That, having failed to allege in our bill, and to show by the evidence, that we are in possession of the premises in controversy, we must be thrown out of court and be left to an action at law in ejectment.

In this connection we recall the fact that this suit was originally commenced in the Vanderburgh Circuit Court, in exercise of a right to bring an action to quiet title, irrespective of any question as to whether complainants were in possession or not. This right was given by section 611, 2 R. S., p. 254. So far, therefore, as our standing in the Circuit Court was concerned, our complaint stated a good and sufficient cause of action, and any subsequent failure to prove that we are in possession would not have mattered. On Law's petition the case was removed to the United States Circuit Court, and, as matter of necessity, the suit had to retain its original character, and the same complaint (or copy thereof) had to form the basis for the further progress of the suit. Are we now to be told that, having been *compelled* to submit to a change of forum, what was originally a good and sufficient cause of action has, by that very change, been totally invalidated and rendered insufficient?

We submit that we are protected against any such result, by the very letter and spirit of the statute providing for the removal of causes. Section 639, part III., paragraph 3, reads as follows: * * * "The copies of pleadings shall have the same force and effect, in *every respect, and for every purpose,* as the *original* pleadings would have had *by the laws and practice of the courts of such State if the cause had remained in the State court.*" What else can this mean, than that the bill (lacking an averment

of possession in complainants) having been sufficient in the Vanderburgh Circuit Court, as would the proof of lacking the same thing have been, it is sufficient in the United States Court, and sets out a good cause of action there?

This question has once, as we understand it, been before this honorable court. See *Gridley et al.* vs. *Westbrook et al.*, 23 Howard (U. S.), page 503.

The further argument of appellee on this point is that the section of the code, under which this suit was brought, was not intended to cover a a case of this kind. That section reads as follows: "An action [to quiet title] may be brought by *any person*, either in or out of possession, *or* by one having an interest in remainder or reversion;" showing an alternative which rebuts the idea that the section applies only to the interest of a remainder-man or reversioner.

## II. The Statute of Limitations.

We insist that the statute of limitations does not bar appellants' right to recover in this cause, for the following reasons:

1. The evidence of Dr. Graff, Reaves and Wright shows that from the time William P. Hall attained his majority he was an inebriate.

2. After his death his children were infants until about the time this suit was brought.

3. Because the appellee does not show an actual ouster of Hall, and such other acts as are necessary to constitute his holding against a co-tenant adverse.

4. William P. Hall at all times, in his partial sober moments, claimed to own the land in controversy, went on the land, and notified persons thereon of his claim.

5. No deed or paper in evidence in this cause purports to convey the property in controversy to the defendant, except the chancery proceedings of *Law et al.* vs. *Hall*, in the Vanderburgh Circuit Court. Mr. Law, in his answer, made under oath, says he does not claim under these proceedings. This being the case, he has no paper title, no paper title giving the boundary of the land; therefore, he will be confined to the parcels of land actually occupied and held adversely for more than twenty years.

"It is from the nature of the estate that a tenant in common of land, in the enjoyment of his rights, must necessarily *prima facie* be in possession of the whole." Angel on Limitations, sec. 429; *Allen* vs. *Hall*, McCord, (S. C.) R. 131.

There being no deed or other paper title in evidence which purports to convey the two-sevenths in controversy, under which Mr. Law claims title (see his answer), the most that can properly be claimed is that he had a naked possession, without color of title. The presumption of law is that the possession of one tenant in common is the possession of all.

The only evidence in the case tending to show a possession or ouster is the testimony of Mr. Law. It is not clear as to acts or dates; it is general, and in some respects vague and uncertain.

The mental condition of Hall, and the tender age of his children, are strong circumstances to be considered by the court in passing upon this question; no presumption should be indulged against them.

III. Counsel urge that the indorsement acknowledging service for William P. Hall, in the chancery proceedings of 1836, was and is no part of the record therein; that, therefore, the record must be considered as silent on the question of service, and the decree held conclusive.

We think the gentlemen have entirely misconceived the point in this connection. We claim that the court, in allowing the decree in that suit, relied upon the indorsement upon the bill, whereby the guardian *ad litem* acknowledges service upon the infant defendant; and it can make no difference, in the matter of invalidating the decree, whether the court proceeded upon something in nowise a part of the record, or upon something which, being properly a part of the record, was insufficient for the purpose intended.

Conceding, for the sake of argument, that this acknowledgment was no part of the record; certain it is, that there being no other evidence of service and appearance than this indorsement, the only reasonable presumption is that the court acted upon it. We are told in appellee's brief that the presumption is that, it being no part of the record, the court did not act upon it, because its insufficiency was apparent. The only difficulty in such a presumption would be to virtually declare that the court never errs.

The proceeding alluded to was begun at the September term, 1836, the date of the filing of the bill being September 27, 1836. Within *three days thereafter* the decree was entered, purporting to determine the final rights of the parties! (We say three days thereafter, and for substantiation refer to the date of the commissionor's deed—viz., September 30, 1836. See Record, page 9.) The law at that time required *ten* days' service; so that it can not be presumed that service had been made upon the defendant, according to law, before the decree was entered; or, that service, or the ten days' notice, was waived, for the defendant was too young, in the eye of the law, to have waived or consented to anything in the premises. We are well aware that the appellee claims several continuances from term to term to have taken place, during which service may have been had; but the truth is that every one of those continuances was subsequent to the date of the decree, and all after the guardian *ad litem* had been appointed and had filed his answer. Indeed, the unusual haste in which the proceedings were rushed through, the sweeping admissions of the guardian's answer, and the fact that a *high price was paid to Samuel Hall* for the property conveyed under the decree (see Law's testimony, Record, p. 45), would all, singly or collectively, be sufficient to raise a doubt as to whether the other parties concerned considered it the infant defendant's business at all to know what was going on.

But there are other reasons, we submit, appearing of record, why the chancery proceeding of 1836 was void as against William P. Hall and his heirs.

(*a*) No proof was adduced in support of the matters charged in the bill. The decree was rendered upon the *admission contained in the answer of the guardian ad litem.* (See decree on page 7, Records.)

Infants can not bind themselves by such admissions. *Coop. Pl.*, 324; *Story's Eq. Pl.*, 871; *Lane vs. Hardwick*, 9*th Beavan*, 148; *Miller vs. Miller*, 1 *Sandford*, 103; and proof should have been adduced in the

same manner as if the bill had been denied. *Hough vs. Cox, 8th Blackford (Ind.)* 300.

(*b*) The bill does not state a good cause of action; and it was upon the facts as set forth in the bill that the decree purports to have been rendered.

The point we make in this connection is, that the bill seeks—

1st. To set aside a series of deeds of conveyance (the deed from Nathaniel Palmer to William Prince, and from Prince's estate to William Daniels, and one from Daniels to William P. Hall) by virtue of an alleged contract which, if ever made, was neither in writing nor under seal—a thing that could not have been done, in view of the fact that each of said deeds is absolute on its face.

2d. From all the facts stated in the bill, it is plain that the complainants had an adequate remedy at law, for any breach of such a contract that may have been made.

Nor is it any answer to say that the bill charges "a failure of consideration;" for in explanation thereof the facts are set out, which could not have been admitted in evidence to vary the terms of the deeds—especially the last two, including the one to Hall; for no where was there any evidence of notice of such a contract chargeable against Prince's grantee and Hall.

Can these matters be considered in a collateral proceeding for the purpose of impeaching the decree of 1836? We submit that they unquestionably can. *Westerwelt* vs. *Tooker*, 2 McLean, 511; *Clark* vs. *Thompson*, 47 Illinois, 25; *Robbins* vs. *Robbins*, 2 Indiana, 74; *Cox* vs. *Matthews*, 17 Indiana, 367.

If any doubt rests upon the above authorities, then we submit the following additional reasons, and the decisions of this honorable court, in support thereof, finally decisive of the question.

(*a*) A judgment or decree rendered in one State court can always be impeached collaterally in a court of another State, as to jurisdiction or fact of service, whether offered in evidence or made the basis of another suit. See *Christmas* vs. *Russell*, 5 Wallace, 290; *Thompson* vs. *Whitman*, 18 Wallace, 457; *Elliott* vs. *Pearsal*, 1 Peters, 328; 6 Peters, 691; 10 Peters, 475; 3 Howard, 762; 8 Howard, 540.

And it makes no difference if the record *is silent*. Parol evidence would be admissible for the purpose of impeaching the record. See *Knowles* vs. *Gaslight and Coke Company*, 19 Wallace, 58; *Thompson* vs. Whitman, 18 Wallace, 457.

(*b*) The decrees, orders and judgments of a State court, when presented before a Federal court, either in the shape of documentary evidence or otherwise, will be regarded as the decrees, etc., of a court of another State. See *Pennoyer* vs. *Neff*, 5 Otto, 714.

IV. The only remaining point to be considered in this reply concerns the partition proceedings of 1833. It is claimed that by the order of the court in those proceedings, William P. Hall was divested of all interest in the particular premises involved in this controversy. What validity Law himself ascribed to this partition suit is manifest from the manner in which he ignored its effect by subsequently instituting he chancery

proceedings to compel Hall to convey to him the identical property which he (Hall) had, as alleged, already been divested of.

The transcript of the record in the partition proceedings was made and certified to within the brief space of three years after the determination thereof (See record, page 51); so that it is not reasonable to suppose, as the gentlemen urge, that some of the papers may have been lost—a reason given why no mention is made in the record of their having ever existed. The record shows, beyond any fair and lawful presumption, that no complaint was ever filed upon which the order of partition was based.

A complaint was necessary. See *Lease et al.* vs. *Carr*, 5 Blackford (Indiana), 353; *Shaw* vs. *Parker*, 6 Blackford (Indiana), 345; *Cox* vs. *Matthews*, 17 Indiana, 367.

No complaint having been filed, the proceedings were void. See authorities last cited, and particularly *Younger* vs. *Roenbaum*, 39 California, 646, wherein the court say (p. 653): "A judgment rendered without a statement of the cause of action, in some form recognized by law, whatever may be its full force and effect in the court where it is rendered, *is of no value beyond the jurisdiction of the court which rendered it.* No authorities are cited to the contrary, and indeed it would seem impossible to maintain, in any form, a judgment, unless it was based upon a complaint or a statement of the cause of action of the party in whose favor the judgment was rendered."

Upon the authorities already cited in the discussion of the previous proposition, the record in the partition proceedings alluded to can also be impeached for the reasons indicated, and said proceeding, as against Hall and his heirs, has no validity.

We submit, in conclusion, therefore, that the complainants herein are justly and lawfully entitled to the property in question, and to the relief for which, in their complaint, they pray.

Respectfully,

JAMES C. DENNY,

*Of Counsel for Complainants.*

FILED
SEP 29 1880
JAMES H. McKENNEY, CLERK

# SUPREME COURT of the UNITED STATES.

October Term, 1880.

CATHERINE HALL. et. al., *Appellants.*

vs.

WILLIAM H. LAW, *Appellee.*

No. 114.

Appeal from the Circuit Court of the United States for the DISTRICT OF INDIANA.

—:o:—

AZRO DYER,
ASA IGLEHART,
J. E. IGLEHART,
*Counsel for Appellee.*

A. C. Isaacs & Bro., Law and Brief Printers, Evansville, Indiana.

# Supreme Court of the United States,

## OCTOBER TERM, 1880,

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| CATHERINE HALL and Others, Appellants, vs. WILLIAM H. LAW, Appellee. | No. 114. |

## BRIEF FOR APPELLEE.

Appeal from the Circuit Court of the United States for the DISTRICT OF INDIANA.

The attention of the Court is respectfully invited to four complete defences to the Complainant's Bill.

### I.

### THE PARTITION PROCEEDINGS.

The material question arising in this case is not presented by counsel for appellants. In the year 1833, there was a partition had of the section of land in controversy, resulting in a decree which

concentrated the interest of William P. Hall in another part of the section, and cut him off from any further interest in the lots and blocks claimed in this suit.

The real estate now sought to be recovered, is situated on the *West side* of Pigeon creek, whereas, by the partition proceedings, his interest is located on the *East side* thereof.

These partition proceedings were instituted under "An Act to provide for the partition of real estate," approved February 1st, 1831. It authorizes any one or more persons who are proprietors of any real estate, (having previously given notice, at least four weeks in some newspaper in the state of the intended application,) to apply to the Circuit Court of the county within which the estate may be situate to appoint three commissioners to divide such estate. The commissioners or any two of them, having taken the prescribed oath, are to make division of said estate as directed by the Court, among the owners and proprietors thereof, according to their respective rights, and partition being made by the commissioners, and return thereof in writing to the Court, particularly describing the lots or portions allowed to each respective owner or proprietor, and the return being acknowledged by the commissioners and accepted by the Court and entered of record in the clerk's office, *this return* or report *shall be a partition* of such lands, lots and tenements therein mentioned." (Acts of 1831, p. 387; Revis. Stat. of Ind. 1838, p. 426.)

The proceedings for partition in our case follow this statute; they are in the proper court, and William P. Hall is a party to the record. (These proceedings appear at pages 12 to 15, of the printed Record.)

It is recited as follows:

"It being proved to the satisfaction of the Court, that David Miller

hath given due and legal notice, that he would on the third day of the Court, (March Term 1833,) make application for the appointment of commissioners to divide among the several proprietors thereof, Fractional Section 25, in Township number 6, South of range number 11, West in the district of land offered for sale at Vincennes. Now, therefore, it is ordered that Robert M. Evans, Alanson Warner and Horace Dunham, are hereby appointed commissioners to divide said fractional section, according to law, between the several proprietors thereof."

The commissioners make their report, assigning to William P. Hall, lot number 2, which begins at the North-west corner of lot number (1) one, runs West to the middle of Pigeon creek, 8 chains, 50 links, thence down the chute of said creek to the Ohio River, thence up said river with the meanders thereof, to the South-west corner of lot number (1) one, thence 17 chains 4 links to the beginning, estimated in point of value, at two-sevenths of said section, and containing (17) seventeen acres. A plat accompanies this report, which sets forth the lot assigned to each proprietor, and to which reference is made by the report. (This plat appears opposite page 12, of the printed Record.)

The report of the commissioners is by the court, confirmed in the following language, to-wit:

"Which report of the commissioners aforesaid, is by the court now here confirmed.
And it is considered by the court here, that the parties to the petition aforesaid, pay the expenses of the partition in the proportion indicated and against the amount of 4 dollars and 88 cents, taxed to William P. Hall, a memorandum of payment is made."

(See pages 14 and 15 of the printed Record.)

Now, what is the effect of this partition?

Fractional Section twenty-five, is made fractional by the Ohio River, which flows along the South end of the section and becomes the South boundary thereof, and Pigeon creek passing through fractional section in a Southernly direction until it joins the Ohio River, divides the section into two parts, which may be called the East end, and the West end of the section.

All the real estate which the appellants seek to

recover in the case, is situate in the West end of the section; that is, West of Pigeon creek. (See testimony of William H. Law, printed Record, at page 40; the testimony of John Theodore Rechtin, at page 35, and the testimony of Elisha L. Conant, at page 37, and the admission of complainant's counsel, page 45.)

It will be observed that in the partition proceedings, the court finds that David Miller had given "due and legal notice" of the application.

Findings of this kind are as conclusive upon the parties in all collateral proceedings, as any adjudication of the court can be. It must be presumed, that they were supported by sufficient testimony. (Freeman on Judgment, Sec. 130.)

It was contended below, and may be here, that in as much as no complaint or petition, or declaration appears in the record, that therefore, the court had no jurisdiction. Whether if it were conclusively shown that this initial paper was wanting, there would be no jurisdiction, we need hardly to inquire, for the record showing that the defendants had notice, that the court rendered the decree confirming the partition, the presumption of the presence and loss of this part of the record, will be entertained after so long a lapse of time, under the authorities hereinafter cited in reference to the conveyance by the commissioner in the chancery case.

We refer specially to Voorhees vs. The Bank 10 Pet. 449; and Thompson vs. Tolmie, 2 Pet. 157; and Grignon's Lessee vs. Astor, 2 How. 319.

But we submit that if the presumption we claim, did not prevail, still the absence of the complaint, petition, bill or declaration, is but error, and if so the decree cannot be impeached collaterally. The provision of the statute under which the proceedings were had, is obscure in reference to the manner of commencing the proceedings. That

part of the statute which relates to the mode of proceedure, has already been sufficiently stated.

It will be observed that the statute does not by its terms require a bill or petition, but the Supreme Court of Indiana hold, that such a paper is necessary, and that to proceed without any petition, bill or complaint, is error, but no intimation is given that the absence of such a proceeding, made and confirmed by the court, the parties having notice, is void, indeed the converse of this proposition is inferable from the language of the court. The question arose upon a writ of error, and a decree for partition, in a case almost identical with the one at bar, was reversed for error without intimation of the invalidity of a judgment rendered without a petition, from which we submit that it may be fairly infered that the court would have held the partition valid and binding as against a collateral attack. (*Lease, et. al.* vs. *Carr*, 5 Black. 353; *Shaw* vs. *Parker*, 6 Id. 645.)

It follows, that whatever interest William P. Hall acquired in the section under his deed from Daniel in 1831, was by the partition limited to the East side of Pigeon creek, and that since the partition proceedings, William P. Hall has had no interest in the real estate on the West side of the creek described in the bill of complaint.

This decree of partition appears to *guillotine* the complainant's case in its infancy, and it is questionable whether the argument should proceed further.

## II.

### The Chancery Proceedings.

The complainant's brief is directed mainly against the chancery proceedings of 1836. It is claimed

that these proceedings are void for want of jurisdiction over the person of the defendant.

The bill of complaint was filed September 27th, 1836, on which appears the following endorsement, to-wit:

"I, Samuel Hall, guardian ad litem, for William P. Hall, do hereby acknowledge service of subpœna in the within bill."
June 10th, 1836. S. HALL.

(Printed Record, 5 and 6.)

It is contended that this indorsement was the mode adopted to aquire jurisdiction, over the person of William P. Hall, and that it must be presumed that no other mode was adopted. This appears to be the rule, where the mode sought to be adopted is one authorized by law. In every case cited, the mode adopted for acquiring jurisdiction of the person was either by publication or summons, and there was a fatal defect in the manner of its execution. No case is found where a memorandum made by a party in a form unknown to the law, without authority of the court, raises any presumption against the proper exercise of jurisdiction. The endorsement signed by S. Hall, purports to acknowledge service upon himself. It does not waive any service of subpœna on William P. Hall. It is a curious memorandum, made in vacation, without legal authority, and never approved by the court. It is not material to enquire what effect, if any, should be given to it. It is not important to enquire whether the memorandum was written in June 1836, or in the year 1873, prior to the institution of this suit. There is no evidence on the subject. The memorandum, whenever written, is no part of the record and should have no more effect upon the chancery proceeding, than if it were a line from Homer's Iliad. It would be dangerous to the peace of society, if a judgment could be impeached, forty years after its rendition by a memorandum written outside of a

court, at an unknown time, in an unknown hand-writing.

The court did not consider the endorsement, nor refer to it. If the court had regarded it as sufficient to dispense with the presence of the defendant, there would have been a recital of the fact.

This court, in *Sargeant* vs. *The State Bank of Indiana*, 12 Howard, 371, defines the test of what is part of the record, and what is not, thus:

> "With respect to the propriety and regularity of this application to the Circuit Court, we would remark in the first place, that the mere fact of a paper being found amongst the files of a cause, does not of itself constitute it a part of the record of the cause. In order to render it a part of the record, it should form some part of the pleadings in the cause, or be brought under, and ingrafted upon the action of the court, by some motion from the parties. Without this, such a paper can no more be a portion of the record, than would be knowledge of facts on the part of a witness, who had been summoned and not examined, or the oral testimony given to a jury, and not noted by exception or otherwise."

In the case from which this quotation is made, the evidence claimed to be a part of the record was a certified transcript of a notice and proof of publication, which with a proper reference, in the proper place of the record, would have rendered it legitimately a part of the record in the usual form of making such proof; but the court refuse to take it into consideration, because no reference is made to it in any entry in the case, to identify it as part of the record.

The case at bar is far stronger. The endorsement relied upon, has none of the elements of a part of a record, and does not purport to be evidence of proper service, and besides this, is obnoxious to the same objection taken by the court in the case cited. The only difference is that in that case the record recites due and legal service, while here the record is wholly silent.

The total silence of the record in respect to the endorsement, raises a presumption that it was never brought to the notice of the court, and for the pur-

pose of deciding at this day, whether the Chancery Court of 1836, had jurisdiction of the person of William P. Hall, this nondescript memorandum found endorsed on the bill of complaint, is not entitled to the slightest consideration.

The endorsement being out of the record, the cases of *Galpin* vs. *Page*; *Clark* vs. *Thompson*, and *Hahn* vs. *Kelley*, have no application, and the ordinary rule in favor of jurisdiction ought to govern. The rule in favor of jurisdiction, has been firmly fixed in the law of Indiana, from an early day, and has become a rule of property.

*Horner* vs. *Doe*, 1 Ind. 130, is the leading case in that state, and is decisive on this point. The proposition squarely announced, is this:

"That where the record discloses nothing upon the point, jurisdiction of the person and of the subject matter, will, the contrary not being proved, be presumed in cases of domestic judgments of general jurisdiction, where they come collaterally in question."

See page 133 of that case where many authorities are cited.

The reason of the rule is that the infants might have been in court in person, at the time of the appointment of the guardian, *ad litem*. See p. 132. And if they were not in court at the time of the appointment of the guardian, *ad litem*, still as the cause was continued, to a subsequent term, notice may in the meantime, have been given to the infant. (*Horner* vs. *Doe*, 132.)

In the Chancery proceedings of 1836, there were subsequent continuances at four different terms, before the decree was rendered confirming the conveyance. A continuance was had at March term, 1837, and at the September term, 1837, at the March term, 1838, at the June term, 1838, and then at the September term, 1838, the deed of the commissioner was confirmed and approved. (Printed Record, p. 6, 7 and 8.)

Now who shall say that the infant may not have

been present in court at some one of these many continuances?

There is another line of decisions, some of which have already been refered to, which strengthen the case at bar, applicable to judicial sales, and which may be said to apply, to a limited extent, to the case at bar. The rulings are to the effect that the decree of the court, confirming the title after a conveyance is made, is conclusive of the jurisdiction of the court over the subject matter, and the person of the defendant, and where such a decree of confirmation is made, the validity of the conveyance cannot be questioned collaterally, unless in a case where it appears upon the face of the record, that the court acted without jurisdiction. (*Voorhees* vs. *Bank of United States*, 10 Pet. 449; *Thompson* vs. *Tolmie*, 2 Pet. 157; *Grignon's Lessees* vs. *Astor*, 2 How. 319.)

In the case at bar, (page 9, printed Record,) the commissioner's deed, after being executed by the commissioner, is acknowledged before the clerk, and confirmed by the court in the following language: "Which said deed is now, here, by the court approved and confirmed."

The presumption that the defendant was in court is strengthened by the order entered June term, 1838, which recites that, "on motion of the defendants, by their attorney, the cause is continued until the next term of this court."

"Where a judgement is recovered in a court of general jurisdiction against a defendant, and the record shows that an attorney of the court, appeared for the defendant and filed an answer, the jurisdiction of the court cannot be controverted, unless it be by proof of fraud."

(*Wiley* vs. *Pratt*, 23 Ind. 633.)

The chancery proceedings fall strictly within the rule of 1. Greenleaf, Sec. 19, that after twenty years jurisdiction of the person is conclusively presumed. No case can be found in conflict with this rule, which is founded in the deepest reason. It is a rule of re-

pose. Such is the mutability of human affairs, that it is not likely that after twenty years, the summons and return can be readily found. With how much more reason, can we say in this case, that it is not likely that the summons and return can be found after more than forty-one years! If decrees of this age, are to be held void, because the proof of service is not found among the papers, then all property has lost its value. It would be against reason to look for such certainty in human affairs.

It is proper to say, that the validity of this record was questioned before Hon. Wm. P. Fishback, an accomplished lawyer of Indiana, in 1879, and as Master, he reported in favor of the jurisdiction, and upon exception filed to his report, the question came a second time before Judge Gresham, and after full argument he again sustained the decree.

## III.

### The Statute of Limitations and Stale Claims.

In addition to the other defences, the statute of limitation is a complete bar to the action. Regarding the commissioner's deed, under the chancery proceedings, as conferring only color of title, it is in proof that William H. Law, and associates, as proprietors of Lamasco, have been in possession of the land from the year 1836, to the present time. (Transcript Record, p. 35 and 43.)

It appears that the identical lots described in the bill, were in actual possession. Improvements were made on lots three and four of block thirty-seven, and they remained in continued possession. Block one hundred and fifty-seven has been used for storing logs for thirty years. (Transcript Record, page 44.)

Sidewalk improvements were placed around block one hundred and forty-two. (Transcript Record, page 45.)

But leaving out of view the history of each lot in detail, the proof abundantly shows, that the proprietors were in exclusive, adverse possession of the fractional section from 1836, to the present time.

During that year, the section was platted and incorporated into the town of Lamasco, a name made by a combination of the names of the proprietors, Law, McCall, and Scott. By this name, the proprietors affixed their signatures and seal, upon every part of the section. By this name the town or city of Lamasco, reached a population of ten thousand people, when by its union with the adjoining city of Evansville, the two cities became one, under the name of Evansville, with a population at this time of thirty thousand. From the year 1836, until now, there is no act of ownership, which these proprietors have not exercised over the land.

They have laid it off in lots and blocks, streets and alleys. They have recorded the plat, giving it their name in full view of the public. They have sold a thousand of these lots to purchasers who went into possession, and still hold possession. They have cleared off the timber, burned the brush, filled ravines, graded the streets, laid sidewalks and built bridges. They have made improvements at a cost of nearly one hundred thousand dollars, and the purchasers of lots, have erected buildings at a cost of ten times that amount. They have paid taxes on this property each year, for forty-four years. (Testimony of William H. Law. Transcript Record, p. 38 to 45 )

By the law of Indiana, these acts of ownership are sufficient to constitute possession of the entire section. The leading Indiana case decides, that the appointment of an agent to take charge of the land,

his cutting timber off the land, his leasing a portion of it to tenants, by whom some clearing and fencing was done, and the payment of taxes, although the land was never enclosed, were such acts of ownership as constituted possession in Longworth extending to the whole quarter section. (*Bell* vs. *Longworth*, 6 Ind. 273.)

In that case, the Indiana court approves the language of Mr. Justice Story in *Ellicott* vs. *Pearl*, 10 Pet: 412, as follows, to-wit:

"Nothing can be more clear, than that a fence is not indispensable to constitute possession of a tract of land. The erection of a fence is nothing more than an act presumptive of an intention to assert an ownership and possession over the property. But there are many other acts which are equally evincive of such an intention; such as entering upon the land and making improvements thereon, raising a crop of corn, felling and selling the timber thereon, etc., under the color of title."

Where there was a sand bank exclusively possessed and used by the defendant for his own benefit, by using and selling sand and this occupancy was notorious to the public; held to constitute adverse possession of the lot. (*Ewing* vs. *Burnett*, 11 Pet. 53.)

But under the Indiana law, the possession need not be adverse, in order that the lapse of the specified time should bar the action.

If one party has been in actual possession for twenty years, whether adversely or not, the claimant, whose original right of entry accrued above twenty years before bringing ejectment, is barred by the statute. (*Vanduyn* vs. *Hepner*, et. al. 45 Ind. 596.)

DeGraff, witness for complainants, and brother of Catherine Hall, states that about the year 1852, William P. Hall employed lawyers to commence proceedings to recover the land. [Transcript Record, page 27.]

It thus appears that the ancestor under whom title is claimed, asserted a cause of action, and employed counsel to enforce it, twenty-two years before

the institution of this suit.

There is no excuse for this long delay. The statute of limitations began to run against William P. Hall in 1847. Born in 1826, he attained his majority in 1847, and enjoyed ten years of vigorous life after that time. He claimed then, to have some interest in the land. (Transcript Record, p. 29.) His father, Judge Hall was a lawyer, William P. Hall was himself a lawyer. (page 28 and 29.) He saw the land again and again, for he visited Evansville frequently, (p 32.) He knew the land was in possession of William H. Law and the other proprietors of Lamasco, (p. 38.) He saw their tenants and purchasers occupying and improving it. He employed lawyers to commence suit, and went upon the land with his attorney and notified the occupants of his claim. (p. 31 and 33.) Yet, after sleeping on these rights for twenty-seven years—a longer period than Van Winkle slept upon the Catskill mountains—this suit is brought.

This case falls clearly within the reason of the statute, that lapse of time should protect the occupant, because papers may be lost, facts forgotten and witnesses dead. Litigation of this kind ought not to be encouraged.

Again, whether we are right in assuming that the appellant's claim is barred by the statute of limitations or not, the answer sets up and the facts show such laches as will prevent a court of equity—which acts upon principles of its own, independently of the statute, and refuses to enforce stale demands—from interposing to enforce the claim set up here. [Maxwell vs. Kennedy, 8 How. 210; Piatt vs. Vattier, 9 Pet. 416; McKnight vs. Taylor, 1 How. 168; Bowman, et. al. vs. Wathen, et. al., 1 How. 189.]

## IV.

### Remedy, if any at Law.

Finally; if the appellant has any remedy, it is at law. The question is fairly raised by the allegations of the answer. [Printed Record page eleven.]

The rule is well settled, that a court of equity will not exercise jurisdiction to the exclusion of a court of law unless the case is brought within some of the well known heads of equity jurisdiction. Because the adverse party is entitled to the common law methods of trial and determination of the controverted questions, unless the case is clearly of equitable cognizance.

True, equity has jurisdiction in a bill or a suit to quiet title, but not unless the complainant be in possession, while here the bill does not allege, nor the evidence prove that the appellant ever was in possession. Indeed the contrary is clearly shown by the evidence. This is not denied, but it is claimed this suit is justified by section 611 of the Indiana civil code of procedure, which reads as follows:

"An action may be brought by any person, either in or out of possession, or by one having an interest in remainder or reversion, against another who claims title to, or interest in real property adverse to him, although the defendant may not be in possession thereof, for the purpose of determining and quieting the question of title."

[2 R. S. 1876, 254, Sec. 611.]

This section it is true, is quite broad and might in terms embrace the case at bar, but under the Indiana code whether the action be for possession, or to quiet title it is but a civil action and only involves a slight difference in the form of the complaint, the mode of trial being the same. But it is submitted that this section does not justify this suit in this form, if it controlled the practice in this court,

as it clearly does not, but that the true construction only allows the action to quiet title by a party out of possession where his interest is in remainder or reversion.

But we submit that the statute of 1872, Revised Statute, sec. 914, does not place the question under discussion within its provisions. It simply adopts the rules of pleading and practice in actions at law, but by no means attempts either to abolish the distinction between actions at law and suits in equity, or to change or in any way modify the chancery jurisdiction. We submit therefore, that the complainant's bill was properly dismissed upon the ground that, the appellants being out of possession and relying upon a legal, and not an equitable title, ejectment was the proper remedy, and there is nothing in the record to justify the attempt of appellant to invoke the equity jurisdiction of the court. And in as much as the objection was not taken by demurrer, but was insisted upon in the answer, the court properly dismissed the bill upon the hearing.

For all these reasons, we earnestly and confidently pray an affirmance of the decree of the court below.

AZRO DYER,
ASA IGLEHART,
J. E. IGLEHART.

*Counsel for Appellee.*

FILED
DEC 8 1880
JAMES H. McKENNEY, Clerk.

# In the Supreme Court of the United States.

CATHERINE HALL, et. al., Appellants,

vs.

WILLIAM H. LAW. Appellee.

## APPELLEE'S ADDITIONAL BRIEF.

AZRO DYER,
ASA IGLEHART,
J. E. IGLEHART,

*Counsel for Appellee.*

A. C. Isaacs & Bro., Law and Brief Printers, Evansville, Indiana.

# In the Supreme Court of the United States.

—o—

CATHERINE HALL, et. al.,
Appellants,
vs.
WILLIAM H. LAW,
Appellee.
} No. 114.

## APPELLEE'S ADDITIONAL BRIEF.

*May it please the Court*:

It now appearing that the counsel for the appellee will probably be unable to argue this case orally, it is deemed necessary to file a short additional brief. This is especially necessary, as learned counsel for the appellant has failed in his brief to give a fair and intelligent statement of the points raised upon the record by the appeal.

### STATEMENT OF THE CASE AND THE POINTS PRESENTED.

We make no point upon the *non* compliance with the rule of court, as the record is simple.

The appellant filed a complaint against the appellee in the State court to quiet his title to the property in controversy; in that court, law and equi-

ty are administered together. The case was removed to the Circuit court by the appellee, where the appellant filed a bill in equity, and had the case docketed on the chancery side of the court. The bill alleges title in the complainant and that the defendant is pretending to claim title under certain chancery proceedings, resulting in a decree and a commissioner's deed, and that the proceedings are void, for want of jurisdiction of the person of the defendant. The record of the Chancery suit is exhibited to the bill.

The defendant's answer sets up title and possession for forty years, and developes these grounds of defense:

1. That in a suit for partition, to which complainant's ancestor was a party, another tract of land was set off to him in severalty as the equivalent of his two-sevenths, undivided of the whole section, whereby he and his heirs the complainants, were barred of their claim to the lands described in the bill. The record of the partition proceedings is exhibited to the answer.

2. That the title under the commissioner's deed, made in the Chancery proceedings is good and valid.

3. That complainant's claim is barred by the statute of limitations, and is a stale demand, which a court of equity will not enforce.

4. That the remedy of the complainants, if they have any, is at law and not in equity.

A general replication was filed, the testimony taken, and upon the final hearing, the court dismissed the bill.

Now if any one of the positions relied upon in the answer be well founded, the decree must be affirmed here.

These several defenses were discussed more or less fully in our original brief. But the review of the authorities of Counsel for appellant, was left for

the oral argument. We will therefore bestow brief attention to these authorities.

Learned Counsel for appellant bases his case upon the want of jurisdiction of the person in the chancery suit, and upon a persistent reiteration that we have no other title except the one derived under these proceedings. He bases his appeal, therefore, upon these two propositions, and to sustain the first, he cites three cases. Galpin vs Page, 18 Wall. 350, Clark vs Thompson 47. Ills. 25. and Hahn vs Kelly 34 Cal. 391.

Galpin vs Page is unlike the case at bar in four important particulars. (1.) The question arose in a proceeding under a statute providing for special proceedings, while the question here arises under the general chancery practice, which, as Counsel himself insists, is governed by the course of the common law. (2.) There the party to be affected by the process was not within the Territorial limits of the jurisdiction of the court, and stress is laid upon this fact, while here the defendant resided as the evidence shows, within the Territorial limits of the jurisdiction of the court, towit, in an adjoining county. (3.) There the record shows affirmatively that regular process was issued but never served, while here as we showed in the former brief, the evidence relied upon to rebut the legal presumption, is not evidence, being no part of the record, (4.) that case was decided upon the point that under the law of California, the reversal of the judgment under which the land was claimed defeated the title of the purchaser he being the Attorney of Record of the judgement plaintiff.

Clark vs Thompson is an Illinois case which is decided upon the ground that the process duly issued, and therefore a part of there cord, showed an endorsement which negatived service and that therefore, the court was without jurisdiction. But besides the difference between that case and the one at bar

in the manner in which jurisdiction is sought to be negatived, the case is in conflict with Horner vs Doe 1. Ind. 130, and cases cited in our former brief.

And as the doctrine announced in the latter case has become a law of property, the court will follow it for that reason; and because the same doctrine is settled in this court, by the cases cited in the former brief, notably Grignons lessee vs Astor 2. How. 319. while in Fell vs Young, 63. Ills. 106, the court Breeze, J., say: "The doctrine of Grignons lessee vs Astor 2. How. 340, has never been the doctrine of this court but has often been repudiated." Rorer on Judicial Sales, Second Edition, §329. Note (7)

So, if Clark vs Thompson is an authority in favor of the appellant, and not distinguishable, still it is the decision of a court which expressly repudiates the rulings of this court upon the very point sought to be sustained by it. So that we need follow it no furthe,

Hahn vs Kelly we cannot review, as we have not the volume containing it before us, but there is nothing in the quotations of learned Counsel to show that it is in conflict with *Horner vs Doe* and the other authorities upon which we rely. Indeed, there is a manifest suppression of so much of the opinion by learned Counsel, in his brief, that, notwithstanding his long extract, the opinion is rendered obscure.

But, there is nothing in it which militates against us here. At all events the defendant, whose service was controverted, was a non-resident of the State of California.

On the eleventh page of their brief, the appellants state that the case of *Horner* vs. *Doe* has been *substantially* overruled in Indiana by the more recent cases of *Ashley* vs. *Laird* 14 Ind. 222, and *Hawkins* vs. *Hawkins* 28 Ind. 66. There is not the slightest foundation for this statement. These cases do not conflict with *Horner* vs. *Doe*, but expressly approve the doctrine of that case.

*Ashley* vs. *Laird* was an action upon an Iowa judgment, the declaration setting out the naked judgment, but not containing any of the pleadings in the cause, nor disclosing what was the cause of action, or the subject of controversy. On demurrer to this declaration, the court very properly held it insufficient upon the ground, that a judgment rendered without any cause of action brought before the court for its adjudication, is a nullity. But in commenting on the question of jurisdiction over the person, the court approves the case of *Horner* vs. *Doe*, in the following language, to-wit:

"There are several ways of acquiring jurisdiction over the parties, as by summons, notice or the voluntary appearance of the parties; and where the record is silent upon this point, jurisdiction is sometimes presumed. [*Vide Horner* vs. *Doe*, 1 Ind. 130." *Ashley* vs. *Laird*, 14 Ind. 223.]

In *Hawkins* vs. *Hawkins*, 28 Ind. 66, the question of jurisdiction did not arise in a collateral proceeding, but directly on appeal. The entry of judgment recited that it appeared to the court by the process and returns thereto, that the defendants had been notified of the pendency of the petition, but the summons and return are set out in full, and they clearly show that the defendant John Hawkins, was *not* named in the writ nor in the return. The judgment against John Hawkins is held erroneous, on appeal for the manifest reason assigned by the court, that "on error or appeal, it must affirmatively appear by the record that the process was duly served, or that the defendant appeared in person or by attorney, or the proceeding will be erroneous." In respect to the doctrine of *Horner* vs. *Doe*, the following language is used:

"Where however, the judgment or proceedings of a court of general jurisdiction comes collaterally in question, and the record discloses nothing upon the point, jurisdiction of the person, the contrary not

being shown, will be presumed. In such cases, every reasonable presumption will be made in favor of the proceedings. [*Horner* vs. *Doe*, 1 Ind. 130, and cases there cited; *Garrard* vs. *Johnson*, 12 Ind. 636." *Hawkins* vs. *Hawkins*, 28 Ind. 71.]

The complainants, then, have no authority for saying that the Indiana Supreme Court has substantially overruled the leading case of *Horner* vs. *Doe*. On the other hand, that case decided in 1848, has been steadily followed down to the present time, as will appear by the following Indiana cases in which it has been cited and approved: *Doe* vs. *Smith*, 1 Ind. 459; *Doe* vs. *Harvey*, 3 Ind. 105; *Babbitt* vs. *Doe*, 4 Ind. 358; *Alexander* vs. *Frary*, 9 Ind. 485; *Ashley* vs. *Land*, 14 Ind. 223; *Cox* vs. *Matthews*, 17 Ind. 377; *Evans* vs. *Ashby*, 22 Ind. 17; *Waltz* vs. *Borroway*, 25 Ind 383; *Hawkins* vs. *Hawkins*, 28 Ind. 71; *Comparet* vs. *Hanna*, 34 Ind. 76; *Gavin* vs. *Graydon*, 41 Ind. 564; *Burk* vs. *Hill*, 55 Ind. 424; *Hays* vs. *Ford*, 55 Ind. 55; *Hunter* vs. *Burnsville Turnpike Company*, 56 Ind. 219; *Wiley* vs. *Pavey*, 61 Ind. 458.]

The case of Hays vs. Ford, 55 Ind. 55, decided in 1876, adheres to the old rule in these unequivocal words: "It is a general rule of law, that where the record discloses nothing on the point, jurisdiction of domestic courts of the person and subject matter, will be presumed in cases where the judgment of those of general jurisdiction come in question collaterally. Horner vs. Doe, 1 Ind. 130."

We need not extend argument, but since the printing of our former brief the last volume of the reports of this court has issued, and a case is therein reported which fully sustains our fourth and last positions, viz; that the court, independently of the defendant's title, might well have rendered the decree dismissing the bill for want of equity. The appellants showed a perfect legal title in their ancestor and descent to them, and the only question left was wheth-

er the defenses of the defendant, were any of them sustained. The bill presented no case of equitable cognizance. It would have been held bad on demurer for want of equity. The court below may have dismissed the bill for want of equity, or more properly because the cause was not one of equitable cognizance, and if the case made justifies the decree it will not be reversed. The case to which we refer is Phelps vs Harris, 11. Otto, 370. This case clearly determines that where the suit is brought by a party who claims under a legal title, and the defendant is in possession claiming title, that he is entitled to the trial of his title in action at law where he may have a trial of the questions of fact by a jury, No quotations from the case are necessary.

But the effect of the ruling there is, to sustain the ruling here upon the fourth ground claimed by us here.

We therefore insist, upon all the grounds relied by us, that the decree of the Circuit Court shall be affirmed. But we desire to avow most distinctly, that while we rely with confidence upon each of our points, it is of the utmost importance to the parties litigant, for reasons not apparent here, but which will easily occur to the court, that the point relied upon by the Counsel for the appellants should be passed upon, and that the last point in order relied upon by us, should be the last to be passed upon, if it should become necessary to pass upon all of them.

AZRO DYER,
ASA IGLEHART,
J. E. IGLEHART,

*Counsel for Appellee.*